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## Information and Notices

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Contents

Page

### *I Information*

#### **Court of Auditors**

2001/C 69/01

Special Report No 22/2000 on evaluation of the reformed clearance of accounts procedure, together with the Commission's replies

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## I

*(Information)*

## COURT OF AUDITORS

**SPECIAL REPORT No 22/2000****on evaluation of the reformed clearance of accounts procedure, together with the Commission's replies***(pursuant to Article 248(4), second subparagraph, EC)**(2001/C 69/01)***CONTENTS**

	<i>Paragraph</i>	<i>Page</i>
LIST OF ABBREVIATIONS .....		3
SUMMARY .....		4
INTRODUCTION .....	1-8	5
Objectives .....	1	5
A brief history of the clearance of accounts procedure .....	2-8	6
ACCREDITATION .....	9-23	6
Number and nature of paying agencies .....	9-12	6
Failure to meet the accreditation criteria .....	13-23	9
The criteria .....	13	9
Debtors .....	14-16	9
Internal control .....	17-18	9
Delegation .....	19-22	9
Sanctions .....	23	10
THE CERTIFYING BODIES .....	24-52	12
Requirements .....	24-27	12
Independence .....	28-30	13
Auditing standards .....	31-32	13
Sampling .....	33-47	13
Method .....	33-35	13
Populations .....	36	15
Parameters .....	37-39	15
Sample size .....	40-41	15
Error evaluation .....	42-47	15
Local offices and on-the-spot controls .....	48-50	16
Qualification of accounts .....	51-52	17

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	<i>Paragraph</i>	<i>Page</i>
CONFORMITY DECISIONS .....	53-54	17
THE CONCILIATION PROCEDURE .....	55-73	19
Background .....	55-59	19
Role of the Conciliation Body .....	60-61	19
Performance measurement of the Conciliation Body .....	62-68	19
The four-month deadline .....	63-64	19
Outcome .....	65-68	20
Why corrections are contested .....	69-70	20
The European Court of Justice .....	71-73	21
CLEARANCE DECISIONS .....	74-86	21
Corrections as a performance indicator .....	74-80	21
Disjunctions .....	81	23
Late payments to beneficiaries .....	82-84	23
Discharge .....	85-86	23
CONCLUSIONS .....	87-91	23
<b>The Commission's replies</b> .....		25

**LIST OF ABBREVIATIONS**

AIMA	Azienda di Stato per gli Interventi nel Mercato Agricolo
AMA	Agrarmarkt Austria
CAP	Common agricultural policy
Cnasea	Centre National pour l'Aménagement des Structures des Exploitations Agricoles
DCCC	Direzione Compartimentale delle Contabilità Centralizzate
DDAF	Direction départementale de l'agriculture et de la forêt
DG	Directorate-General
DMNR	Department of Marine and Natural Resources
EAGGF	European Agricultural Guidance and Guarantee Fund
EDP	Electronic data processing
ENR	Ente Nazionale Risi
FEGA	Fondo Español de Garantía Agraria
FIRS	Fonds d'intervention et de régularisation du marché du sucre
Gedidagep	Directorate-General for the Administration of Purchases of Agricultural Produce
IACS	Integrated administrative control system
IAS	International Audit Standards
IFAC	International Federation of Accountants
Ifadap	Instituto do Financiamento e Apoio ao Desenvolvimento da Agricultura e Pescas
INGA	Instituto Nacional de Intervenção e Garantia Agrícola
ISA	International Standards on Auditing
LASER	Dienst Landelijke Service Regelingen
MLE	Most likely error
MUS	Monetary unit sampling
Ofival	Office national interprofessionnel des viandes, de l'élevage et de l'aviculture
OLAF	European Anti-fraud Office
RRV	Riksrevisieverket
SDE	Services déconcentrés de l'Etat
UEL	Upper error limit

## SUMMARY

### Context

The purpose of this Report is to evaluate the operation of the reformed clearance of accounts system that was introduced in 1996 to overcome the problem of long delays between the closure of the accounts, their clearance by the Commission and the discharge given by the budgetary authorities. The main features of this reformed system are the accreditation of paying agencies by the Member States and an annual certification of their accounts by a body appointed by the Member States resulting in a financial clearance decision taken in April of the following year. The certificate must state whether the Certifying Body has gained reasonable assurance that the paying agency's accounts are true, complete and accurate. Compliance of payments with Community rules is only covered as regards the capability of the paying agency's administrative structure to ensure that such compliance has been checked before a payment is made. Corrections based upon the Commission's own examination of compliance aspects are included in later conformity decisions. Member States have the opportunity to contest the corrections proposed by the Commission before the Conciliation Body and, whether or not they choose to do so, have the right to appeal to the European Court of Justice.

### Accreditation

There are still too many paying agencies (91 in 1998 reduced to 86 in September 2000) and the number is likely to increase as a result of regionalisation in Italy (see paragraph 10). Some paying agencies are not distinct (see paragraph 9) and too many fail to meet all of the accreditation criteria (see paragraphs 14 to 22). Despite this, Member States have not withdrawn their accreditation and the Commission has resorted to the application of sanctions for Portugal and Greece (see paragraph 23).

### The Certifying Bodies

Although at least four Certifying Bodies had failed to comply with the independence requirement (see paragraph 29), this problem was subsequently resolved by the Commission. In many cases the audit documentation held by the Certifying Bodies has not met internationally accepted auditing standards (see paragraphs 31 and 32). The information concerning sampling provided by the Certifying Bodies was particularly deficient in this respect. Error definition and classification has not been uniform, extrapolation was either not performed at all or was often wrongly calculated (see paragraphs 33 to 47). Inappropriate use has also been made of paying agencies' internal audit resources for certification work.

Despite these shortcomings, the Certifying Bodies have generally succeeded in their task of producing reports and certificates

within the deadlines laid down. The quality of these reports has improved considerably since 1996 and accounts have been qualified where necessary. Whilst the number of accounts qualified has diminished over the period, for 1998 almost one third of the total expenditure was declared by paying agencies whose accounts were qualified (see paragraph 51).

### The conciliation procedure

Recourse to the Conciliation Body has given Member States the opportunity to contest proposed corrections. This has led to an overall reduction in corrections of some 275 million euro (see paragraph 65). Nevertheless, the Conciliation Body has largely failed to conciliate the opposing views of the Commission and the Member States (see paragraph 65). The Conciliation Body should take a clear position on all cases presented to it and come up with concrete suggestions with regard to the level of correction that should be applied. The Commission should accept these suggestions unless it can clearly demonstrate that the Conciliation Body is mistaken. This might result in more final settlements and fewer cases before the European Court of Justice (see paragraph 71).

### Clearance decisions

The total amount of corrections for a given year is lower under the reformed system than it was under the old (see paragraph 74). This is partly due to the fact that the data are still not complete. Other reasons are: the impact of better pre-payment controls (IACS); the 24-month rule; errors found by the Certifying Bodies are not used as the basis for corrections if the Member States have taken appropriate action; the effect of the Conciliation Body.

It has not been possible for the Commission to clear all paying agency accounts in the April financial decision. Significant amounts had to be disjoined in 1996 (see paragraph 81). For the first year of the reformed system (1996) more than three years have passed and the final conformity decision has yet to be taken.

### Conclusion

There is no evidence that the reformed clearance procedure has accelerated the overall timescale for clearing the expenditure in both financial and conformity terms for a given EAGGF year. Nevertheless, the reform of the clearance procedure has resulted in improved accountability at Member State level and should be regarded as a considerable achievement (see paragraph 90).

## INTRODUCTION

## Objectives

1. The purpose of this Report is to evaluate the operation of the reformed clearance of accounts <sup>(1)</sup> system generally, with particu-

lar emphasis on the work of the Certifying Bodies and the conciliation procedure. The Court has previously examined certain features of this system, in particular the accreditation of paying agencies in the context of the 1996 clearance of accounts <sup>(2)</sup>. The period covered relates to EAGGF years 1991 to 1998 inclusive but does not analyse the clearance decisions per se since the Court's findings in this respect are included in its annual reports and other publications *Table 1*).

Table 1

## Clearance decisions and delays in respect of EAGGF years 1991 to 1998

Financial year	Decision <sup>(1)</sup>		OJ	Delay <sup>(2)</sup>	Court Reports/ Opinions	OJ
1991	94/281/EC 94/871/EC	29.4.1994 21.12.1994	L 120, 11.5.1994, p. 59 L 352, 31.12.1994, p. 82	3 years	Opinion No 6/95	C 338, 11.11.1996
1992	96/311/EC 96/701/EC	10.4.1996 20.11.1996	L 117, 14.5.1996, p. 19 L 323, 13.12.1996, p. 26	4 years	SR No 1/97	C 52, 21.2.1997
1993	96/311/EC 97/333/EC 97/608/EC	10.4.1996 23.4.1997 30.7.1997	L 117, 14.5.1996, p. 19 L 139, 30.5.1997, p. 30 L 245, 9.9.1997, p. 20	3,5 years	SR No 1/97 SR No 2/98 SR No 2/98	C 52, 21.2.1997 C 121, 20.4.1998
1994	98/358/EC	6.5.1998	L 163, 6.6.1998, p. 28	3,5 years	AR 1998	C 349, 3.12.1999, paragraphs 2.63 to 2.77
1995	1999/187/EC 1999/596/EC 2000/197/EC	3.2.1999 28.7.1999 1.3.2000	L 61, 10.3.1999, p. 37 L 226, 27.8.1999, p. 26 L 61, 8.3.2000, p. 15	4 years	AR 1999 AR 1999 AR 2000	
1996	F1 97/316/EC F2 97/609/EC C1 1999/186/EC C2 1999/350/EC C3 1999/603/EC C4 2000/216/EC	5.5.1997 30.7.1997 3.2.1999 4.5.1999 28.7.1999 1.3.2000	L 138, 29.5.1997, p. 24 L 245, 9.9.1997, p. 25 L 61, 10.3.1999, p. 34 L 133, 28.5.1999, p. 60 L 234, 4.9.1999, p. 6 L 67, 15.3.2000, p. 37	6 months 3 months more than 3 years	SR No 21/98 AR 1999 AR 1999 AR 1999 AR 2000	C 389, 14.12.1998
1997	F1 98/324/EC F2 1999/151/EC C1 1999/186/EC C2 1999/350/EC C3 1999/603/EC C4 2000/216/EC	29.4.1998 10.2.1999 3.2.1999 4.5.1999 28.7.1999 1.3.2000	L 141, 13.5.1998, p. 38 L 49, 25.2.1999, p. 42 L 61, 10.3.1999, p. 34 L 133, 28.5.1999, p. 60 L 234, 4.9.1999, p. 6 L 67, 15.3.2000, p. 37	6 months 10 months more than 2 years	AR 1998 AR 1999 AR 1999 AR 1999 AR 2000	C 349, 3.12.1999, paragraphs 2.78 to 2.102
1998	F1 1999/327/EC F2 2000/179/EC C2 1999/350/EC C3 1999/603/EC C4 2000/216/EC	30.4.1999 14.2.2000 4.5.1999 28.7.1999 1.3.2000	L 124, 18.5.1999, p. 28 L 57, 2.3.2000, p. 31 L 133, 28.5.1999, p. 60 L 234, 4.9.1999, p. 6 L 67, 15.3.2000, p. 37	6 months 10 months	AR 1998 AR 1999 AR 1999 AR 1999 AR 2000	C 349, 3.12.1999, paragraphs 2.54 and 2.55

<sup>(1)</sup> F: financial decision.

C: conformity decision.

<sup>(2)</sup> Till 1995 included, from year end (15.10.xxxx) to final decision date;

from 1996 on, from year end (15.10.xxxx) to the date of the first financial decision, then delay between the first and the second financial decisions and from year end (15.10.xxxx) to the date of the last conformity decision regarding that EAGGF financial year.

<sup>(1)</sup> Under the common agricultural policy, it is the task of the Member States to ensure that payments are correctly made under suitably tight control mechanisms. Under this regime, virtually 100 % of expenditure is in the hands of the Member States, with the Commission having to fill the role of an honest and impartial quality assurer. In the event that the Commission finds that incorrect payments have been made, it requests the recovery of excess sums under a procedure called the 'clearance decision'. The Member State concerned can either accept this decision or challenge it bilaterally, with the Conciliation Body or if this fails before the European Court of Justice, which acts as a final arbiter (PE 285.788/A).

<sup>(2)</sup> Special Report No 21/98 concerning the accreditation and certification procedure as applied to the 1996 clearance of accounts for EAGGF-Guarantee expenditure (OJ C 389, 14.12.1998).

### *A brief history of the clearance of accounts procedure*

2. Prior to 1996, the clearance of accounts decision was based mainly on audits done by a specific unit within the Commission's Directorate-General for Agriculture, focused on the implementation of measures in the Member States. Although there were no audits of the paying agencies as such and their accounts were not subject to certification, these audits could lead to corrections of the expenditure declared by the Member States. When all the corrections for a given EAGGF year were known they were included in a single clearance of accounts decision taken by the Commission. These procedures led to long delays in making clearance decisions.

3. In April 1991, the Commission set up a working party to suggest how the clearance of accounts system might be reformed. The working party report of October 1992 (referred to as the 'Belle' report, after its chairman) paved the way for the introduction of two fundamental changes: separate financial and conformity decisions and the introduction of a conciliation procedure. It advocated a prevention rather than punishment philosophy and greater cooperation and partnership between the Member States and the Commission. It was the intention that this reformed procedure would come into operation with reference to the 1992 EAGGF year but with the exception of the conciliation procedure, its introduction was delayed until 1996.

4. The reforms were contained in an amendment to Council Regulation (EEC) No 729/70 <sup>(1)</sup> concerning the financing of the CAP. In its opinion of December 1994 on the proposed amendments <sup>(2)</sup>, the Court expressed its commitment to the principle of a single, annual clearance decision whilst at the same time recognising the problems associated with the extant system, namely long delays in the clearance decision and weaknesses in internal control. The Court considered that the new split decision system was a compromise rather than a solution to the clearance problems. It recommended a degree of prudence and suggested that it should be trialled and subjected to a full evaluation by the Commission before 31 December 1998.

5. The proposal became Council Regulation (EC) No 1287/95 <sup>(3)</sup>. The Court's suggestion of a trial period and consequent need for an evaluation was not adopted. The main changes were the accreditation of paying agencies by the competent authorities in the Member States and the annual certification of paying agency accounts, which forms the basis for the Commission's financial clearance decision. The certificate must state whether the Certifying Body has gained reasonable assurance that the paying agency's accounts are true, complete and accurate. Compliance of pay-

ments with Community rules is only covered as regards the capability of the paying agencies' administrative structure to ensure that such compliance has been checked before a payment is made.

6. The Belle report recommended that the Commission should be responsible for the accreditation of the paying agencies and the approval of the appointment of the Certifying Bodies but the Council did not accept the Commission's proposal.

7. Detailed rules for the application of the reformed clearance procedures were laid down in Commission Regulation (EC) No 1663/95 <sup>(4)</sup>. This Regulation provides a guideline, in the form of an Annex, for the criteria that should be taken into account by Member States when accrediting a paying agency and the nature and tasks of the Certifying Body. The Certifying Body must produce a report and a certificate for each paying agency by 31 January of the following year. The certificate, report and accounts must be submitted to the Commission by 10 February. The Commission has until 31 March to verify this information and inform the Member States of its position.

8. On the basis of this information the Commission must take a financial clearance decision no later than 30 April. Article 5(2)(b) of Regulation (EEC) No 729/70 <sup>(5)</sup> states that the financial decision shall cover the 'integrality, exactitude and veracity of the accounts submitted'. Article 5(2)(c) empowers the Commission to decide on expenditure that is to be excluded from Community financing because it does not comply with Community rules. Such conformity (also known as compliance) decisions are not subject to any deadline but the corrections can only be applied retrospectively for a maximum of two years <sup>(6)</sup> preceding written notification to the Member State concerned.

### **ACCREDITATION**

#### *Number and nature of paying agencies*

9. Article 4 of Regulation (EEC) No 729/70 states in general terms what is required for a paying agency to be accredited but does not specify what form paying agencies should take, merely that they be 'authorities and bodies of the Member States' (Article 4(1) of Regulation (EEC) No 729/70). Only the Member States can accredit paying agencies. For the most part, paying agencies are independent structures organised along market lines (France, Netherlands) or on a geographical basis (Germany, Spain, Austria). In some Member States there is only one paying agency

<sup>(1)</sup> Council Regulation (EEC) No 729/70 of 21 April 1970 on the financing of the CAP (OJ L 94, 28.4.1970, p. 13).

<sup>(2)</sup> Opinion No 5/94 (OJ C 383, 31.12.1994).

<sup>(3)</sup> Council Regulation (EC) No 1287/95 of 22 May 1995 (OJ L 125, 8.6.1995, p. 1).

<sup>(4)</sup> Commission Regulation (EC) No 1663/95 of 7 July 1995 (OJ L 158, 8.7.1995, p. 6).

<sup>(5)</sup> Council Regulation (EEC) No 729/70 of 21 April 1970 as amended by Regulation (EC) No 1287/95 (see footnote 3).

<sup>(6)</sup> Fraud cases are not subject to this time limit.

(Denmark, Greece, Sweden) or one general agency with a few much smaller specialised agencies (Belgium, Italy, Portugal). In some cases the paying agency is amorphous in that it consists of an entire ministry (Ireland, Luxembourg, Finland, United Kingdom). This can lead to problems in determining whether or not local offices should be treated as delegated bodies. In Germany (Bavaria, Baden-Württemberg), the paying agency is a specific unit or a number of specific units (Bavaria) but the accreditation concerns the Ministries as a whole and has implications for the independence of the Certifying Body.

10. The same article requires the Member States to limit the number of paying agencies to the minimum necessary. The Court has previously expressed its concern over the increasing number of paying agencies and the scope for rationalisation (Special Report No 21/98 <sup>(1)</sup> and more recently Annual Report 1998 <sup>(2)</sup>). Austria has closed three small paying agencies but in other Member States, 16 paying agencies declared less than 10 million euro in 1998. In 1998, there were 91 paying agencies (Table 2). This

number has decreased to 86 in 2000, but Italy has declared that it intends to establish (up to 20) regional paying agencies. Given the already difficult task of the clearance of accounts unit, which is required to examine and assess 90 reports in the space of six weeks (mid February until the end of March), further proliferation will require the Commission either to dedicate more resources to this task or risk diluting its coverage and/or delaying its financial clearance decision beyond the regulatory deadline.

11. Although the regulations do not explicitly say so, accreditation is, by its nature, non-transferable. The Commission should therefore insist that when the new paying agencies take over from ALMA in Italy and Gedidagep in Greece <sup>(3)</sup>, all are subject to the accreditation procedure.

12. In Ireland a new paying agency, DMNR, made payments of 33 million euro during 1998 but was not accredited until December of that year.

<sup>(1)</sup> See footnote 2 on page 5.

<sup>(2)</sup> OJ C 349, 3.12.1999.

<sup>(3)</sup> Greece has undertaken to completely reform its paying agency. Amongst other changes, the olive oil agency and the various Boards (cotton, tobacco and milk) will be abolished. A revamped and considerably reinforced paying agency (1 700 staff) will replace Gedidagep and a public Certifying Body will be created (50 staff).

Table 2  
Paying agencies and their Certifying Bodies

Number	Member State	Paying agency	Certifying Body	Type	Fees	Amounts declared in mio EUR <sup>(1)</sup>	% of total
1	F	ONIC	CCCOP <sup>(2)</sup>	Public	Free	4 183,05	10,62
2	I	AIMA	Reconta Ernst & Young <sup>(2)</sup>	Private	Paid	3 965,74	10,07
3	EL	Gedidagep	DRM Stylianou SA <sup>(2)</sup>	Private	Paid	2 525,45	6,41
4	UK	MAFF	NAO <sup>(2)</sup>	NA body	Paid	2 212,10	5,61
5	E	Andalucía	IG de Consejería de Economía y Hacienda /PWC	Mixed		1 650,21	4,19
6	IRL	DAF	Arthur Andersen <sup>(2)</sup>	Private	Paid	1 585,69	4,02
7	F	SIDO	CCCOP	Public	Free	1 424,00	3,61
8	DK	EU-Direktoratet	Internal Audit Unit	Public	Free	1 163,52	2,95
9	UK	IBEA	NAO	NA body	Paid	1 059,40	2,69
						<b>19 769,16</b>	<b>50,18</b>
10	D	BLE	Bescheinigende Stelle/Innenrevision	Public	Free	939,04	2,38
11	A	AMA	BMLF revision <sup>(2)</sup>	Public	Free	784,72	1,99
12	E	FEGA	Interventor Delegada del Ministério de Economía	Public	Free	782,93	1,99
13	F	Onilait	CCCOP	Public	Free	773,47	1,96
14	D	Bayern StMELF	Bescheinigende Stelle/Innenrevision <sup>(2)</sup>	Public	Free	764,27	1,94
15	S	SJV	RRV <sup>(2)</sup>	NA body	Free	747,06	1,90
16	F	Ofival	CCCOP	Public	Free	714,27	1,81
17	F	Services déconcentrés du Trésor	CCCOP <sup>(2)</sup>	Public	Free	710,48	1,80
18	E	Castilla-La Mancha	IG de Consejería de Economía y Hacienda /PWC <sup>(2)</sup>	Mixed		673,79	1,71
19	E	Castilla y León	IG de Consejería de Economía y Hacienda <sup>(2)</sup>	Public	Free	664,15	1,69
20	F	FIRS	CCCOP <sup>(2)</sup>	Public	Free	597,11	1,52
21	D	Hamburg-Jonas	Bescheinigende Stelle	Public	Free	591,10	1,50
22	B	BIRB	Ernst & Young	Private	Paid	580,52	1,47
23	S	MMM	Coopers & Lybrand	Private	Paid	577,61	1,47
24	D	Niedersachsen MELF	Bescheinigende Stelle/Innenrevision	Public	Free	555,42	1,41
25	P	INGA	IGF(+Auditoria internado INGA+Auditoria do Ministério da Agricultura) <sup>(2)</sup>	Public	Free	550,28	1,40
26	UK	SOAEFD	NAO	NA body	Paid	534,30	1,36
27	NL	PZ	Accountantsdienst (AD) <sup>(2)</sup>	Public	Free	450,01	1,14
28	E	Extremadura	IG de Consejería de Economía y Hacienda	Mixed		438,34	1,11
29	I	DCCC	Ragioneria Provinciale dello Stato <sup>(2)</sup>	Public	Free	388,24	0,99
30	NL	HPA	Accountantsdienst (AD) <sup>(2)</sup>	Public	Free	385,04	0,98
31	D	Mecklenburg-Vorpommern LM	Bescheinigende Stelle/Innenrevision	Public	Free	380,86	0,97
32	E	Aragón	IG de Diputación General de Aragón	Public	Free	368,30	0,93
33	NL	LASER	Accountantsdienst (AD) <sup>(2)</sup>	Public	Free	362,57	0,92
34	D	Sachsen-Anhalt ML	Bescheinigende Stelle/Innenrevision	Public	Free	338,91	0,86
35	F	Oniflhör	CCCOP <sup>(2)</sup>	Public	Free	311,40	0,79
36	D	Brandenburg MELF	Bescheinigende Stelle/Innenrevision	Public	Free	308,17	0,78
37	D	Baden-Württemberg MLR	Bescheinigende Stelle/Innenrevision <sup>(2)</sup>	Public	Free	303,26	0,77
38	D	Sachsen	Bescheinigende Stelle/Innenrevision	Public	Free	283,98	0,72
39	B	Ministerie van Landbouw (DG3)	Ernst & Young	Private	Paid	277,04	0,70
40	E	Cataluña	IG de Consejería de Economía y Hacienda /DT <sup>(2)</sup>	Mixed		263,75	0,67
41	UK	WOAD	NAO	NA body	Paid	260,82	0,66
42	D	Nordrhein-Westfalen Westfalen	Bescheinigende Stelle/Innenrevision	Public	Free	253,26	0,64
43	D	Schleswig-Holstein MELFF	Bescheinigende Stelle/Innenrevision	Public	Free	244,19	0,62
44	UK	DANI	NAO	NA body	Paid	240,54	0,61
45	D	Thüringen TLVwA	Bescheinigende Stelle/Innenrevision <sup>(2)</sup>	Public	Free	239,37	0,61
46	D	Hessen HMILFN	Bescheinigende Stelle/Innenrevision	Public	Free	172,47	0,44
47	F	Cnasea	CCCOP <sup>(2)</sup>	Public	Free	146,70	0,37
48	NL	PVE	Accountantsdienst (AD) <sup>(2)</sup>	Public	Free	131,66	0,33
49	E	Canarias	IG de Consejería de Economía y Hacienda	Public	Free	126,81	0,32
50	F	SAV	CCCOP	Public	Free	122,06	0,31
51	E	Valencia	IG de Consejería de Economía y Hacienda	Public	Free	121,71	0,31
52	D	Rheinland-Pfalz MWVLW	Bescheinigende Stelle/Innenrevision	Public	Free	121,64	0,31
53	F	Odeadom	CCCOP	Public	Free	111,18	0,28
54	P	Ifadap	IGF+ Auditoria interna	Public	Free	99,63	0,25
55	E	Navarra	IG de Consejería de Economía y Hacienda	Public	Free	94,49	0,24
56	D	Nordrhein-Westfalen Rheinland	Bescheinigende Stelle/Innenrevision	Public	Free	86,73	0,22
57	F	Onivins	CCCOP	Public	Free	76,53	0,19
58	E	Galicia	IG de Consejería de Economía y Hacienda /PWC	Mixed		67,94	0,17
59	I	ENR	Coopers & Lybrand <sup>(2)</sup>	Private	Paid	65,67	0,17
60	A	ZA Salzburg	Team from Ministry of Finance <sup>(2)</sup>	Public	Free	62,18	0,16
61	NL	PT	Accountantsdienst (AD)	Public	Free	52,65	0,13
62	E	Murcia	IG de Consejería de Economía y Hacienda	Mixed		45,79	0,12
63	E	Madrid	IG de Consejería de Economía y Hacienda /DT	Mixed		38,72	0,10
64	E	Asturias	IG de Consejería de Economía	Public	Free	36,62	0,09
65	IRL	DMNR	Arthur Andersen	Private	Paid	33,25	0,08
66	E	Pais Vasco	IG de Consejería de Economía y Hacienda	Public	Free	31,46	0,08
67	E	La Rioja	IG de Consejería de Economía y Hacienda	Public	Free	22,68	0,06
68	L	Ministère de l'agriculture	Deloitte & Touche	Private	Paid	17,61	0,04
69	E	Cantabria	IG de Consejería de Economía y Hacienda	Public	Free	17,01	0,04
70	E	Baleares	IG de Consejería de Economía	Public	Free	16,69	0,04
71	UK	FC	NAO	NA body	Paid	14,63	0,04
72	D	Saarland MUEV	Bescheinigende Stelle/Innenrevision	Public	Free	13,23	0,03
73	D	Nordrhein-Westfalen LfBJ	Bescheinigende Stelle/Innenrevision	Public	Free	10,21	0,03
74	F	FIOM	CCCOP	Public	Free	7,07	0,02
75	D	Bayern StMLU	Bescheinigende Stelle/Innenrevision	Public	Free	6,07	0,02
76	NL	DLG	Accountantsdienst (AD)	Public	Free	5,50	0,01
77	D	Hamburg WB	Bescheinigende Stelle/Innenrevision	Public	Free	3,21	0,01
78	UK	CCW	NAO	NA body	Paid	2,25	0,01
79	D	Berlin SenWiTech	Bescheinigende Stelle/Innenrevision	Public	Free	1,88	< 0,01
80	D	Nordrhein-Westfalen LfA	Bescheinigende Stelle/Innenrevision	Public	Free	1,72	< 0,01
81	NL	STOAS	Accountantsdienst (AD)	Public	Free	1,51	< 0,01
82	D	Schleswig-Holstein MNU	Bescheinigende Stelle/Innenrevision	Public	Free	1,31	< 0,01
83	D	Bremen	Bescheinigende Stelle/Innenrevision	Public	Free	1,23	< 0,01
84	B	Organisme payeur de la Région wallonne	Direction budgétaire	Public	Free	0,85	< 0,01
85	A	BMLF Abt VI. B.8 (Wien)	BMLF revision	Public	Free	0,59	< 0,01
86	A	Landesamt Tirol	Prüfdienst des Buchhaltung des Amtes	Public	Free	0,54	< 0,01
87	B	Vlaamse Gemeenschap	Afd. Accounting	Public	Free	0,38	< 0,01
88	E	FROM	Interventor Delegada del Ministério de Economía	Public	Free	0,18	< 0,01
89	NL	PVis	Accountantsdienst (AD)	Public	Free	0,13	< 0,01
90	NL	MVO	Accountantsdienst (AD)	Public	Free	0,03	< 0,01
91	A	Landesamt Vorarlberg	Abteilung Gebarungskontrolle des Amtes	Public	Free	0,01	< 0,01
		<b>Total</b>				<b>39 400,18</b>	<b>100,00</b>

<sup>(1)</sup> BP B1-3 7 0 adjustments not included for the Member States which do not deduct them automatically.

<sup>(2)</sup> Certifying Bodies' work examined by the Court.

### **Failure to meet the accreditation criteria**

#### **The criteria**

13. Guidelines for accreditation criteria are set out in the Annex to Regulation (EC) No 1663/95. The Court commented on a number of weaknesses affecting accreditation in the context of the 1996 accounts <sup>(1)</sup>: poor internal controls, lack of EDP security, inadequate monitoring of delegated services and accounting problems. In its 1998 Annual Report, the Court placed particular emphasis on the continuing problem with the delegation of functions and the protection of the Community's financial interests. Whilst some improvements have since been made, important weaknesses were found to persist and are discussed below.

#### **Debtors**

14. Point 2 of the Annex to Regulation (EC) No 1663/95 also refers to the need to properly record debtors in the books of account. The situation with regard to debtors remained unsatisfactory during 1998 when the total outstanding debt reported by the paying agencies stood at around 1 000 million euro (Annual Report 1998, paragraph 2.94). The Commission consequently released a new version of its guideline (No 5) in July 1998 and the clearance of accounts unit has undertaken a series of visits to nine of the paying agencies with the highest recorded debt. The Commission concluded that there have been improvements in the management of the debts since the reform of the clearance of accounts procedure but that the debtors ledgers are still not complete, that a large amount of debt will never be recovered and that most of the large value debts relate to cases reported to the European Anti-fraud Office (OLAF) under Article 3 of Council Regulation (EEC) No 595/91 <sup>(2)</sup>.

15. OLAF is responsible for following up the recovery of debts the Member States have declared. Based on the information received from the Member States, when the debts are considered to be irrecoverable, OLAF proposes to the Commission to charge them to the Community budget or to the Member State. Member States are only charged if they are deemed to have been negligent in pursuing the debtors concerned. They are notified of the correction, which then follows normal clearance procedures (conciliation and formal decision etc.).

16. The most recent corrections based on OLAF notifications relate to 1994 (taken in May 1998) and 1995 (taken in February

and July 1999 and March 2000). These corrections amount to just 1 million euro whereas, according to OLAF 1 700 million euro is outstanding. During 1999 OLAF undertook a review of all the cases notified before 1995 and still pending (1 000 million euro in value) in order to charge them either to the Community or the Member States. Lists of debts and proposals regarding which to charge to whom have been sent to six Member States <sup>(3)</sup> (2,6 million euro Community, 57,2 million euro Member States (of which 90 % relates to Spain) and 2,6 million euro requiring further clarification). Lists in respect of other Member States including the two largest debtors (Italy and Germany which account for 75 % and 6 % respectively of all pre-1995 debt) have yet to be communicated. Decisions on the corrections ultimately applied will not be taken until 2001.

#### **Internal control**

17. Point 3 of the Annex to Regulation (EC) No 1663/95 states that the paying agency should have an internal audit service to ensure that internal controls are operating effectively and a technical service to verify the facts on which payments to claimants are based.

18. Several French paying agencies (Ofival, FIRS, Cnasea) do not have sufficient internal audit resources to meet the accreditation criteria. The SDE is an amalgam of the 93 DDAFs (under the authority of the Ministry of Agriculture) and the Trésor public (part of the Ministry of Finance) over which there is inadequate internal audit and external control. This situation is exacerbated by the fact that the DDAFs are also responsible for the administration and on site inspection for a large number of EAGGF schemes (mainly IACS and amounting to 72 % of declared expenditure in 1998) on behalf of other paying agencies.

#### **Delegation**

19. Point 2 of the Annex requires the paying agency to execute and account for payments. However, in Denmark, the paying agency had delegated these functions for accompanying measures to Strukturdirektoratet and, for forestry measures, to Skov-og Naturstyrelsen. In Greece, the paying agency has delegated the payment function to the cooperatives and amounts are often paid in cash to the final beneficiaries. It is clear that these delegations go beyond the limits specified in the Annex to the Regulation.

20. Point 4 of the Annex foresees the delegation of the authorisation function and/or the technical service, provided that the responsibilities are clearly defined and that the delegated bodies

<sup>(1)</sup> See footnote 2 on page 5.

<sup>(2)</sup> Council Regulation (EEC) No 595/91 of 4 March 1991 concerning irregularities and the recovery of sums wrongly paid (OJ L 67, 14.3.1991, p. 11).

<sup>(3)</sup> Belgium, Greece, Spain, Ireland, the Netherlands, Portugal.

have effective systems for ensuring that they fulfil their responsibilities. The results of pre-payment technical controls must be communicated to the paying agency on a regular basis. For the most part, these controls are carried out under IACS or in respect of export refunds.

21. In France, the access to the DDAFs by the paying agencies should be improved so as to enable the Certifying Body to ensure that the paying agencies' procedures 'are such as to give reasonable assurance that the operations charged to the fund (EAGGF) comply with the Community rules'. The United Kingdom considers regional offices of paying agencies to be an integral part of the paying agency rather than delegated bodies and this has been accepted by the Commission, given that the Certifying Body has full access to them.

22. Physical inspection of goods exported with refunds is carried out by the national Customs Authority. These authorities are independent organisations responsible for a wide range of controls over exports, including those relating to CAP products. As such they are not delegated bodies and are not formally required to provide details of the controls they have carried out to the paying agencies. Nevertheless, it is clear that the paying agencies need such information in order to ensure that the pre-payment checks on export refunds have been carried out <sup>(1)</sup>. The information flow between the Customs Authorities and the paying agencies has

generally been inadequate for this purpose and the Commission has insisted that this problem be addressed in the form of a protocol between the two parties. Whilst the protocols have been introduced, the quality and or number of physical inspections by customs services continues to be a cause for concern in some Member States (Germany, Italy, Sweden) and the data supplied are not yet sufficient (Greece, France) for the paying agencies to ensure that export refund payments are in conformity with Community legislation.

### Sanctions

23. Member States, not the Commission, have the authority to withdraw accreditation under Article 4 of Regulation (EEC) No 729/70. As can be seen from *Table 3*, the accounts from some paying agencies have been qualified in respect of more than one year. Member States have tended to work on the specific problems rather than withdraw their accreditation, the consequences of which could be extremely severe where the paying agency concerned is a very important one or perhaps the only one. If the Commission considers that a Member State is not doing enough to improve the situation it can reduce the monthly advances under Article 13 of Council Decision 94/729/EC <sup>(2)</sup>. This sanction has only been applied to Portugal, 5,3 million euro (IACS weaknesses, 1999) and Greece, 105,7 million euro (IACS weaknesses and non-application of other accreditation criteria, 1999).

<sup>(1)</sup> The Annex (point 4(iv)) to Commission Regulation No 1663/95 requires that the paying agency be informed 'on a regular and timely basis of the results of controls effected, so that the sufficiency of these controls may always be taken into account before a claim is settled'.

<sup>(2)</sup> Council Decision 94/729/EC of 31 October 1994 (OJ L 293, 12.11.1994, p. 14).

Table 3  
**Certifying Bodies qualifications of paying agencies accounts since 1996**

Number	Member State	Paying agency	1998 Amounts declared (in mio EUR)	% of total	QUAL. 1996	QUAL. 1997	QUAL. 1998
1	F	ONIC	4 183,05	10,62			X
2	I	AIMA	3 965,74	10,07	X	X	
3	EL	Gedidagep	2 525,45	6,41		X	X
4	UK	MAFF	2 212,10	5,61	X		
6	IRL	DAF	1 585,69	4,02	X		
7	F	SIDO	1 424,00	3,61	X		
8	DK	EU-Direktoratet	1 163,52	2,95			X
9	UK	IBEA	1 059,40	2,69	X	X	
12	E	FEGA	782,93	1,99	X	X	X
16	F	Ofival	714,27	1,81			X
17	F	Services déconcentrés du Trésor	710,48	1,80			X
20	F	FIRS	597,11	1,52		X	
21	D	Hamburg-Jonas	591,10	1,50	X		
22	B	BIRB	580,52	1,47	X	X	
24	D	Niedersachsen MELF	555,42	1,41			X
25	P	INGA	550,28	1,40	X	X	
26	UK	SOAEFD	534,30	1,36	X		
30	NL	HPA	385,04	0,98	X		
33	NL	LASER	362,57	0,92	X	X	
34	D	Sachsen-Anhalt ML	338,91	0,86			X
35	F	Oniflhor	311,40	0,79		X	X
37	D	Baden-Württemberg MLR	303,26	0,77			X
40	E	Cataluna	263,75	0,67	X		
45	D	Thüringen TLVwA	239,37	0,61		X	
47	F	Cnasea	146,70	0,37			X
48	NL	PVE	131,66	0,33	X		
53	F	Odeadom	111,18	0,28		X	
54	P	Ífadap	99,63	0,25	X	X	
	I	IGFOR <sup>(1)</sup>			X		
57	F	Onivins	76,53	0,19	X		
61	NL	PT	52,65	0,13	X		
64	E	Asturias	36,62	0,09		X	
66	E	Pais Vasco	31,46	0,08		X	
76	NL	DLG	5,50	0,01	X		
80	D	Nordrhein-Westfalen LfA	1,72	0,00		X	X
85	A	BMLF Abt VI. B.8 (Wien)	0,59	0,00		X	
87	B	Vlaamse Gemeenschap	0,38	0,00			X
88	E	FROM	0,18	0,00	X		
89	NL	PVis	0,13	0,00	X	X	
		<b>Total number of qualified paying agencies</b>			<b>21</b>	<b>17</b>	<b>13</b>
		<b>Total of the expenses declared by the qualified paying agencies</b>			<b>18 545,9</b>	<b>13 502,0</b>	<b>11 737,5</b>
		<b>% of the total amount of expenses declared</b>			<b>46,32</b>	<b>32,77</b>	<b>29,79</b>

<sup>(1)</sup> IGFOR was closed in 1997.

## THE CERTIFYING BODIES

### Requirements

24. Article 3 of Regulation (EC) No 1663/95 requires the Certifying Body to be operationally independent of the paying agency. It must base its certificate on an examination of procedures and on a sample of transactions. The certificate must state whether the accounts are true, complete and accurate and whether the internal control procedures have operated satisfactorily. The certificate must be supported by a report on the Certifying Body's findings. However, compliance aspects are limited to ensuring that the paying agency itself is able to demonstrate that it has the necessary administrative structures to ensure that claims are checked for compliance before they are paid. The Certifying Body should conduct its examination according to internationally accepted auditing standards.

25. The clearance unit has reviewed the work of the Certifying Bodies by examining and analysing their reports and discussing any key findings and/or apparent shortcomings in the reports during visits to a number of paying agencies and Certifying

Bodies. While it has examined the Certifying Bodies methodologies for sampling and error evaluation or respect of international audit standards this has not been a systematic part of its work.

26. In previous years, DG 'Financial Control' (now DG 'Audit') accompanied the clearance teams during a number of their visits to the Certifying Bodies/paying agencies. In some cases, DG 'Agriculture' and DG 'Audit' shared the accreditation/certification workload. In the Court's opinion DG 'Audit' should not perform work more properly carried out by DG 'Agriculture', but should assess it.

27. During 1999, the Court visited 18 Certifying Bodies (see Table 2) to examine in detail the work performed by them in respect of the 1998 accounts and to examine whether it was performed to internationally accepted auditing standards. Together these Certifying Bodies were responsible for certifying the accounts of 48 paying agencies that accounted for some 70 % of the total expenditure declared in 1998. The Court's examination suggests that the quality of the work of 11 Certifying Bodies both meets the Commission's requirements, and would enable the Court to rely upon them (Table 4). It should be noted that there has been an improvement in the overall quality of the reports produced by the Certifying Bodies for the years 1996 to 1998.

Table 4

Result of the Court's evaluation of Certifying Bodies' 1998 Reports

Member State	Certifying Body	Satisfactory	% of total expenditures declared (1998)
F	CCCOP	Yes	23,29
UK	NAO	Yes	10,97
I	Reconta Ernst & Young	Yes	10,07
EL	DRM Stylianou SA		6,41
IRL	Arthur Andersen		4,11
NL	Accountantsdienst (AD)	Yes	3,53
A	BMLF revision	Yes	1,99
D	Bescheinigende Stelle/Innenrevision von Bayern		1,94
S	RRV (NAI)	Yes	1,90
E	IG de Consejería de Economía y Hacienda de Castilla-La Mancha	Yes	1,71
E	IG de Consejería de Economía y Hacienda de Castilla y León	Yes	1,69
P	IGF+IA	Yes	1,65
I	Ragioneria Provinciale dello Stato		0,99
D	Bescheinigende Stelle/Innenrevision von Baden-Württemberg		0,77
E	IG de Consejería de Economía y Hacienda de Cataluña	Yes	0,67
D	Bescheinigende Stelle/Innenrevision von Thüringen		0,61
I	Coopers & Lybrand		0,17
A	Team From Finance Ministry	Yes	0,16
			72,45

### **Independence**

28. Sixty Certifying Bodies were responsible for certifying the 1998 accounts of the 91 paying agencies: given their federal structure Germany and Spain have 41 Certifying Bodies between them. Broadly speaking, Certifying Bodies are either private firms or public bodies (see Table 2). Private firms were directly responsible for the certification of 9 610 million euro (25 % of the total expenditure claimed). Member States are responsible for the appointment and any remuneration of the Certifying Bodies. The private firms have been appointed either by open tender or direct contracting.

29. In Denmark, until 1998, the internal audit unit of the paying agency was used as the Certifying Body and was not independent. In Germany (Bavaria, Baden-Württemberg), internal audit and the Certifying Body constitute the same 'combined' unit under the Ministry of Agriculture <sup>(1)</sup>. In Austria (Zollamt Salzburg), the independence of the Certifying Body was at risk because there was a conflict of interest for one of the two auditors, who also had duties within 'Finanzlandesamt Salzburg', which is responsible for the paying agency itself. Since the audit these problems have been resolved by the Commission.

30. Some Certifying Bodies have used the services responsible for the internal audit of the paying agencies to carry out substantive testing of a sample of payments. This varies from 10 % of the work (Sweden) to more than 50 % (Italy (ENR), Netherlands (LASER), Portugal (INGA, Ifadap)). While it may be appropriate for Certifying Bodies to place reliance on the work of these units when assessing internal controls, internal audit resources should not be used to perform certification work to the extent that the units concerned are no longer able to fulfil their other tasks, thereby prejudicing the ability of paying agencies to meet the accreditation criteria.

### **Auditing standards**

31. The Commission guideline on 'Principles for the certification of the accounts of a paying agency' (July 1997) makes clear that the certification must be carried out broadly in accordance with the International Audit Standards (IAS), now called International

Standards on Auditing (ISA), set out by the International Federation of Accountants (IFAC).

32. The IFAC's handbook states that the audit documentation should 'provide another auditor who has no previous experience with the audit with an understanding of the work performed and the basis of the principal decisions taken'. The Court's examination of the audit working papers retained by the Certifying Bodies to support their reports has shown that their extent and quality varies from unsatisfactory (Ireland) to comprehensive (Greece, Spain, Netherlands, Portugal). In many cases the Certifying Body has failed to properly file the documentation, to indicate on the working papers who completed them and when or to evidence management review (France, Austria, Sweden, United Kingdom). A particular weakness concerns the documentation relating to sampling.

### **Sampling**

#### **Method**

33. The Commission's guideline No 3 on the 'Principles for the certification of the accounts of a paying agency' (July 1997) states that the Certifying Body should aim to achieve an assurance level of 95 % that the accounts are correct. This degree of assurance may be obtained from examining the internal control system and from a test of a sample of transactions. For sampling purposes, MUS is recommended.

34. The approach applied by most Certifying Bodies was MUS (Table 5). Among the Certifying Bodies which did not use MUS for 1998, some stated that they would apply MUS for 1999 (Italy (AIMA), Austria (AMA)). Although MUS was used to determine the sample size, it was not always used to select the transactions (Greece, Italy (DCCC)).

35. Some Certifying Bodies have relied on the coordinating body/paying agencies to perform the sampling on their behalf (France, Austria (AMA)), but have since performed this task themselves. In Spain, the Certifying Body for four autonomous communities contracted out the sampling to a university and was not able to provide adequate supporting documentation for this.

<sup>(1)</sup> A private audit firm was appointed as the Certifying Body for 1999 for Denmark. For Germany the situation is likely to be resolved in time for certification of the 2000 accounts.

Table 5  
Sampling criteria for 1998

Member State	Paying agency	Certificate	Substantive testing							Commission requirements after review	
			No of populations	Method	Assurance from sampling	Expected error	Samples (No)	Most likely error	Upper Error Limit	Sample increase	New error evaluation
Denmark	EU-Direktoratet	Qualified	2 <sup>(1)</sup>	Monetary Unit Sampling	90 %, 80 %	15 %, 20 %	727	7 858 756 <sup>(8)</sup>	Not calculated	No	No
Germany	Baden-Württemberg MLR	Unqualified	1 <sup>(1)</sup> <sup>(2)</sup>	Monetary Unit Sampling	95 %	No	360	2 153 305 <sup>(3)</sup>	Not calculated	No	Yes
Germany	Bayern StMELF	Unqualified	1 <sup>(1)</sup> <sup>(2)</sup>	Monetary Unit Sampling	95 %	No	352	4 361 691 <sup>(3)</sup>	Not calculated	No	Yes
Germany	Thüringen TLVWA	Unqualified	1 <sup>(1)</sup> <sup>(2)</sup>	Monetary Unit Sampling	95 %	No	356	24 760 <sup>(3)</sup>	Not calculated	No	No
Greece	Gedidagep	Qualified	7	Manual selection	90 %, 95 %	No	131	Not calculated	Not calculated	No	No
Spain	Andalucía	Unqualified	4	Monetary Unit Sampling	95 %	50 %	593	0	Not applicable	No	No
Spain	Castilla-La Mancha	Unqualified	2	Monetary Unit Sampling	95 %	50 %	600	0	Not applicable	No	No
Spain	Castilla y León	Unqualified	3	Monetary Unit Sampling	92 %, 93 %	15 %	908 <sup>(4)</sup>	141 975	560 293 237	No	No
Spain	Cataluna	Unqualified	2 <sup>(1)</sup>	Monetary Unit Sampling	95 %	10 %	701	76 192 <sup>(5)</sup>	373 907 312	No	No
France	SIDO	Unqualified	7	Monetary Unit Sampling	95 %	10 %	194 <sup>(15)</sup>	0	0	No	No
France	FIRS	Unqualified	2 <sup>(1)</sup>	MUS+ Manual selection	95 %	10 %	110	0	Not applicable	No	No
France	Ofival	Qualified	3 <sup>(1)</sup>	Monetary Unit Sampling	95 %	10 %	899 <sup>(13)</sup>	7 281 813 <sup>(12)</sup>	Not calculated	No	No
France	Cnasea	Qualified	1 <sup>(9)</sup>	Monetary Unit Sampling	95 %	10 %	357 <sup>(10)</sup>	0	357 <sup>(11)</sup>	No	Yes
France	Services déconcentrés du Trésor	Qualified	1	MUS+ Manual selection	95 %	10 %	421	0	Not applicable	No	No
France	ONIC	Qualified	6 <sup>(1)</sup>	Monetary Unit Sampling	95 %	10 %	824 <sup>(15)</sup>	Not calculated <sup>(14)</sup> <sup>(18)</sup>	Not calculated	No	No
France	Oniflor	Qualified	7 <sup>(1)</sup>	MUS+ Manual selection	95 %	10 %	304	Not applicable	Not applicable	No	No
Ireland	DAF	Unqualified	3 <sup>(16)</sup>	Monetary Unit Sampling	75 %, 85 %	No	not clear <sup>(24)</sup>	0 <sup>(24)</sup>	Not calculated	No	No
Ireland	DMNR	Unqualified	2	Monetary Unit Sampling	75 %	No	not clear <sup>(24)</sup>	0 <sup>(24)</sup>	Not calculated	No	No
Italy	AIMA	Qualified	1 <sup>(2)</sup>	Variable sampling	85 %	No	915	0	Not applicable	No	No
Italy	DCCC	Unqualified	1 <sup>(6)</sup>	Risk-based selection	85 %	10 %	227	Erroneous <sup>(7)</sup>	Not calculated	No	No
Italy	ENR	Unqualified	2	MUS+Manual selection	80 %	10 %	397	0	Not applicable	No	No
Netherlands	HPA	Unqualified	1 <sup>(22)</sup>	MUS+ Manual selection	95 %	10 %	646	163 709 <sup>(20)</sup> <sup>(21)</sup>	Not calculated	No	No
Netherlands	LASER	Unqualified	4 <sup>(1)</sup>	MUS+ Manual selection	95 %	10 %	1 177	617 101 <sup>(21)</sup>	Not calculated	No	No
Netherlands	PVE	Unqualified	1 <sup>(1)</sup>	Monetary Unit Sampling	90 %	20 %	345	0	Not calculated	No	No
Netherlands	PZ	Unqualified	1 <sup>(1)</sup>	Monetary Unit Sampling	95 %	20 %	223	0	Not applicable	No	No
Austria	AMA	Unqualified	1 <sup>(1)</sup>	RSW + Manual selection	95 %	10 %	594	886 609 <sup>(19)</sup>	Not calculated	No	No
Austria	ZA Salzburg	Unqualified	1	Monetary Unit Sampling	85 %	10 %	227	3 179 <sup>(19)</sup>	Not calculated	No	No
Portugal	INGA	Unqualified	1 <sup>(17)</sup>	Monetary Unit Sampling	90 %	10 %	277	5 222 414	Not calculated	Not applicable	No
Portugal	Ifadap	Unqualified	1	Monetary Unit Sampling	85 %	10 %	238	867 908	Not calculated	Not applicable	No
Sweden	SJV	Unqualified	1 <sup>(2)</sup>	Monetary Unit Sampling	95 %	10 %	777	35 690 <sup>(26)</sup>	Not calculated	No	No
United Kingdom	IBEA	Unqualified	3 <sup>(1)</sup> <sup>(16)</sup>	Manual selection	63 %	No	300	0 <sup>(25)</sup> <sup>(27)</sup>	Not calculated	No	No
United Kingdom	Soaeft	Unqualified	1 <sup>(1)</sup>	Manual selection	70 %	No	120	1 500 <sup>(23)</sup>	Not calculated	No	No
United Kingdom	DANI	Unqualified	1 <sup>(2)</sup>	Manual selection	63 %	No	100	0	Not calculated	No	No
United Kingdom	MAFF	Unqualified	1	Manual selection	74 %	No	135	486 121	Not calculated	No	No

<sup>(1)</sup> Small measures were excluded from the population and selected manually.

<sup>(2)</sup> There were two drawings on expenditures effected during two separate time intervals.

<sup>(3)</sup> Error evaluation not in accordance with MUS practice.

<sup>(4)</sup> In addition to MUS, there were also transactions selected because of high monetary value.

<sup>(5)</sup> This figure represents the total error. An error evaluation was carried out for each of the populations.

<sup>(6)</sup> One population, but where the transactions in high-risk areas are more likely to be audited.

<sup>(7)</sup> No extrapolation carried out; error evaluation carried out on the basis of the number of errors found (and not on the monetary value).

<sup>(8)</sup> Statistical data here presented for the two populations together; the Certifying Body correctly treated them separately.

<sup>(9)</sup> For the other populations, there were only conformity tests and no sampling for substantive tests.

<sup>(10)</sup> Only 63 of the files were available at the time of the audit from the Certifying Body.

<sup>(11)</sup> Not an increase of sample but a new sample on the PMSEE expenses that could not be checked in the first instance, see note 10 of the table.

<sup>(12)</sup> CCCOP qualified the accounts but finally no correction was made by the Commission (after a further mission there).

<sup>(13)</sup> In the third population, the criteria were 80 % level of confidence and 1 % level of materiality, but only 19 transactions were tested out of 185 because already five errors had been found and an extrapolation was made.

<sup>(14)</sup> For one population, no substantive testing was made because the conformity testing showed a lot of failures; CCCOP decided to qualify that budget line.

<sup>(15)</sup> The sampling and selection of transactions for per hectare aid were common to ONIC and SIDO.

<sup>(16)</sup> The population included national funds as well.

<sup>(17)</sup> Public storage was not included in the MUS sample.

<sup>(18)</sup> CCCOP found out that for small maize producers, a wrong ratio of production was applied but they were not able to quantify it; it was one of the reasons for qualifying the ONIC's accounts, and there have also been corrections in clearance 1994 and 1995.

<sup>(19)</sup> The extrapolated error was under the 1 % materiality in both paying agencies.

<sup>(20)</sup> In fact, here it is the total error because, after finding the systematic error, all the transactions were checked.

<sup>(21)</sup> Most likely error.

<sup>(22)</sup> Mixture of MUS and manual as the first sample was not representative (file from which it was extracted was not the right one).

<sup>(23)</sup> Some known errors are not quantified. This should have been done and would then maybe have led to the qualification of the accounts.

<sup>(24)</sup> We have asked for information about the sample size and the error evaluation during the mission and in the sector letter but we have not received any response yet (the CB does not keep working papers at all).

<sup>(25)</sup> Error excluded from error evaluation and later charged to national budget.

<sup>(26)</sup> Not clear from the report about the error extrapolation. Will be followed up during EAGGF 1A mission in February.

<sup>(27)</sup> The errors and error extrapolation is not clear from the report. Three populations were identified and a sample size of 100 each was determined.

## Populations

36. It is essential to establish that the population from which the sample is to be taken is complete. This means that the Certifying Body should reconcile the population data to the accounts. The Certifying Bodies for some paying agencies have not evidenced this aspect of their work (Ireland, Italy, United Kingdom) others have not been able to reconcile the data (SDE (France)). In some cases, the population incorrectly contained non-EAGGF payments and/or the national element of co-financed measures (Ireland, United Kingdom) which may affect the conclusions drawn from the results of testing.

## Parameters

37. Sampling is used to determine if errors in the accounts are, taken as a whole, material (i.e. unacceptably high). This is done by extrapolating errors found in the sample and comparing the resulting most likely error and upper error limit <sup>(1)</sup> with a pre-set materiality threshold. If the upper error limit is lower than the materiality threshold, the accounts can be considered as acceptable. All the Certifying Bodies visited have used 1 % materiality.

38. Whilst it is a requirement that Certifying Bodies obtain 95 % overall assurance from their audits, not all of this needs to be obtained from substantive tests on sample items. Auditing standards also allow part of the assurance to be obtained from an assessment of inherent and control risks, thus reducing the assurance required from substantive tests and, consequently, sample sizes. However, assurance from the assessment of control risk requires the auditor to evaluate and test the operation of the internal control system and conclude that it operating to a high standard.

39. Two thirds of the Certifying Bodies sought to obtain all the required assurance (95 % recommended by the Commission) from substantive tests on sample items (see *Table 5*). Some Certifying Bodies relied on earlier experience and good internal control in order to reduce the level of assurance obtained from sample testing, thereby reducing the sample size (see *Table 5*). Denmark assessed the risk for each population and set its sample so as to obtain 80 % of its assurance from sample testing for arable crops and 90 % for export refunds. The Certifying Body for ENR (Italy) sought to obtain 80 % of its assurance from the sample, relying, for the remainder, on its evaluation of the internal control procedures and in particular the work performed by the internal audit unit, despite the fact that the area aid measure was introduced for

the first time in 1998 and, consequently, neither the Certifying Body nor internal audit had any experience of auditing such a scheme. In Ireland, the Certifying Body sought to obtain 75 % of its assurance from the sample for most of the schemes audited. The United Kingdom has obtained between 63 % and 74 % of its assurance from substantive testing the balance coming from its evaluation of inherent and control risks. These reduced assurance levels are acceptable where the Certifying Body can demonstrate that it can obtain the additional assurance required from other sources.

## Sample size

40. The guidelines on 'Sampling and error evaluation' issued by the Commission in July 1998 suggest that at least 85 % of the assurance should be obtained from substantive testing. This implies a minimum sample size of 223 transactions, rising to 406 where all of the assurance has to be obtained from substantive testing. Although this guideline was issued too late to affect the sampling carried out by the Certifying Bodies for 1998 certification, most Certifying Bodies did in fact take samples within this range. Some tested far more transactions than the strict application of MUS required. For example, RRV (Sweden) tested twice as many.

41. For 1998, the Certifying Bodies tested some 32 000 payments. At national level the differences between the numbers of transactions tested is particularly noticeable, ranging from 131 for Greece to over 11 000 for Spain. Much of the explanation lies in the number and nature of the paying agencies themselves but also important is the discretion given to Certifying Bodies to determine the number of populations for audit purposes.

## Error evaluation

42. The Commission guideline cites IAS 19 (superseded by ISA 530): 'The auditor should analyse any errors detected in the sample and project the errors found in the sample to the population. The auditor must compare the projected population error to the tolerable error'. For this purpose the Certifying Body should calculate the MLE and the UEL <sup>(2)</sup>. Strictly speaking, only if the UEL is below the preset materiality threshold will the auditor be 95 % sure that there is not a material incidence of error.

<sup>(1)</sup> The most likely error is an extrapolation of the errors found in the sample to project them across the population. The upper error limit is the most likely error plus a statistical allowance to take account of the risk that the sample may not be representative of the population.

<sup>(2)</sup> MLE = sum of taintings\*ASI (average sampling interval).  
UEL = basic precision + sum of taintings\*ASI\*PC (Poisson coefficient) + known (systematic) errors.

43. Errors may be divided into two main types, substantive and formal. Substantive errors are errors with some sort of financial impact, implying that the wrong amount has been paid to the beneficiary and subsequently erroneously reimbursed by the Commission. Formal errors are errors in the handling of a specific transaction, but where the correct amount was paid to the beneficiary and declared to the Commission. In terms of the certification of accounts, the Commission is only concerned with substantive errors. Within this category, it distinguishes between systematic and random (one-off) errors. Systematic errors should be investigated to determine the actual extent of the error in the population and should not be extrapolated. Random errors found in the sample should be extrapolated.

44. The Court considers that the error evaluations, as presented in the Certifying Bodies' reports, are, in some cases incomplete or inconsistent. More specifically:

- (a) whereas some Member States have included all errors found, regardless of their value (Germany), others have a built-in tolerance level, whereby minor errors were not included in the extrapolation (Italy);
- (b) the Certifying Body has not treated national deductions from payments to beneficiaries as errors (Greece);
- (c) systematic errors, although described in the report of the Certifying Body, were not quantified and were not included in the error evaluation summary and were charged to the national budget (United Kingdom);
- (d) errors have been reclassified from random to systematic and are thereby not extrapolated (Germany, Sweden) and, in Italy, an irregular payment found in the sample examined by the Certifying Body was not treated as an error on the grounds that recovery action had been taken, but this occurred after the closure of the accounts.

45. For the 37 paying agencies (covering 36 % of expenditure), for which the Certifying Bodies calculated the MLE, the total error amounts to 43,4 million euro equivalent to an error rate of 0,2 %. For 17 other paying agencies (covering 33 % of expenditure), the Certifying Body's reports explicitly state that no errors were found. For the remaining 37 paying agencies (31 % of expenditure) it is either not clear whether errors were found or they were not extrapolated.

46. When the Commission recalculated the error evaluations for Germany three Certifying Bodies, (Bavaria, Baden-Württemberg, Lower Saxony), were found to have incorrectly approved the pay-

ing agencies' accounts. Subsequently, two of the Certifying Bodies (Bavaria and Baden-Württemberg), by reclassifying some random errors as systematic errors convinced the Commission that their accounts were correct. Similarly, in Sweden the Certifying Body found two errors which should have led it to qualify the accounts but decided to classify the larger of the two errors as systematic and carry out further work. This option is foreseen under the new guideline issued in July 1998 and effectively allows the Member States to avoid qualification by investing in extra audit work. In the Court's view, this is only acceptable if carried out before the submission of the certificate.

47. The Certifying Bodies visited do not follow up errors detected in the course of their work on the previous year's certification. Moreover, the Commission does not monitor error rates. In order to determine whether the situation is improving or deteriorating at a particular paying agency, or to identify any apparent anomalies amongst the error rates reported by the Certifying Bodies for different paying agencies within the same Member State the Commission should start to compile a database.

#### **Local offices and on-the-spot controls**

48. Some Certifying Bodies have not adequately covered local offices. In Spain for example, within the autonomous communities there are a number of regional offices and a far larger number of local offices involved in the handling of claims, but few are visited by the Certifying Body <sup>(1)</sup>.

49. Regulation (EC) No 1663/95 does not preclude the Certifying Bodies from carrying out on the spot visits at final beneficiary level. They are required to certify that the paying agency is able to ensure that claims comply with Community rules before they are paid (see paragraph 5). In practice, for most schemes, this means whether the IACS has been properly implemented and the required level of on farm inspection has been carried out. Most Certifying Bodies have limited their scope to confirmation that the required number of inspections has been carried out and have neither re-performed nor accompanied IACS inspections. With regard to the error rates and penalties applied in the context of IACS, the Certifying Bodies do not generally have or make use of this information when certifying compliance with Community rules. The Commission's failure to require the paying agencies to clearly present their findings in terms of random and risk-based samples

<sup>(1)</sup> For the three autonomous communities visited by the Court, seven of the 18 regional offices and three of the 169 local offices were controlled by the Certifying Bodies.

and to quantify the sanctions applied means that a fundamental measurement of the actual value of error in the IACS population is not calculated. The Commission should insist that this data is provided and is verified by the Certifying Body.

50. In Sweden, the Certifying Body does not have the legal right to carry out on-the-spot visits at final beneficiary level. The situation in other Member States is more flexible. For example, in Austria, the Certifying Body has accompanied IACS inspectors on 29 visits. In Spain, in one of the three autonomous communities visited by the Court, the Certifying Body attended three re-inspections out of the 10 performed by the paying agency's technical services. In the Netherlands, the Certifying Body did not attend any inspections. In the Court's opinion the Certifying Bodies should give greater emphasis to their assessment of the effectiveness of IACS and should obtain first-hand knowledge by accompanying inspectors on both standard and reperformance inspections. The same is true of customs controls.

### Qualification of accounts

51. Table 3 shows that the number of accounts qualified by the Certifying Bodies has decreased by 40 % (21 to 13) over the 1996 to 1998 period. However, the expenditure included in the accounts that have been qualified in 1998 remains unacceptably high at 11 700 million euro (30 %). Seven paying agencies had their accounts qualified for 1996 and 1997 but have subsequently been given clear certificates. Three paying agencies give continuing cause for concern because they were qualified in 1997 and 1998, and among them is Greece, which is the third largest paying agency. Only the accounts for FEAGA (Spain) have been qualified for three consecutive years. The common reasons for qualification are scope limitation (the Certifying Body was not able to obtain all the information it required) and the failure to meet accreditation criteria — accounting for stocks and debtors, control over delegated bodies, performance of technical services (IACS), accounting and internal control systems.

52. A qualified account may result in the expenditure declared by the paying agency being disjoined from the April financial decision pending further clarification/enquiries. The account is subsequently cleared by the Commission in a second decision,

with or without corrections. Some qualified accounts are accepted by the Commission because the qualification has no financial importance to the year in question.

### CONFORMITY DECISIONS

53. The financial clearance decision taken in respect of a given EAGGF year does not prevent the Commission from later disallowing expenditure that it considers has not been effected in accordance with Community rules. Whilst the Certifying Bodies are not required to certify the legality and regularity of the expenditure declared by the paying agencies, their reports often contain observations of this nature. The reports thus provide an input to the work of the unit in DG 'Agriculture' which is responsible for conformity investigations. This unit has a substantial ongoing programme to check that the Community provisions have been properly implemented and that the payments to final beneficiaries were correct. Where these inspections show that the operation of agricultural subsidies has been unsatisfactory, the Commission can impose corrections, either on a flat-rate basis (2 %, 5 %, 10 %, 25 %) of the expenditure in question, or where possible, on the basis of specific quantifications of erroneous payments to beneficiaries. Any such corrections proposed by the Commission, either as a result of investigating such observations, or stemming from its own enquiries, must be notified to the Member States who have the right to invoke the conciliation procedure. Only when this procedure has run its course is the Commission in a position to take a conformity decision. Retrospection cannot extend more than two years before the date of notification of the audit findings.

54. The first conformity decision was not taken until February 1999 (see Table 1) and consisted for the most part of corrections for repeated weaknesses. The second related to weaknesses in the application of the Over Thirty Months Scheme in the United Kingdom <sup>(1)</sup> and the third conformity decision concerned late payments and other bookkeeping adjustments. The combined value of these three conformity decisions taken during 1999 is relatively modest (207 million euro) and they cover the 1996 to 1998 EAGGF years (Table 6). Since later conformity decisions may also cover 1996 expenditure it is too early to draw conclusions concerning the total value of corrections for even the first year (1996) under the reformed clearance system.

<sup>(1)</sup> See Special Report No 19/98 concerning the Community financing of certain measures taken as a result of the BSE crisis (OJ C 383, 9.12.1998).

Table 6

**Clearance of accounts corrections (1991-1998)**

Amounts (in mio ECU or EUR)		1991	1992	1993	1994	1995	1996	1997	1998
Expenses declared (including B1-3 7 0)	a	31 255,9	30 480,2	34 008,0	33 592,8	35 654,4	39 062,5	40 884,3	38 857,4
Expenses initially disjoined (p.m.)	( <sup>1</sup> )						25 986,7	107,8	2 453,5
Expenses disjoined	b	30,0	41,5	1 566,7	1 876,2	40,3	0,0	0,0	0,0
Expenses disjoined during the previous financial year and cleared	c	1,2	28,6	41,2	1 565,8	1 876,6			
<b>Expenses cleared</b>	<b>d=a-b+c</b>	<b>31 227,1</b>	<b>30 467,3</b>	<b>32 482,5</b>	<b>33 282,4</b>	<b>37 490,7</b>	<b>39 062,5</b>	<b>40 884,3</b>	<b>38 857,4</b>
Main clearance decision		1 494,3	718,3	539,9	307,8	429,1			
First complementary clearance decision		9,8	69,9	107,7		123,8			
Second complementary clearance decision				107,1		39,0			
<b>Total clearance decisions</b>	( <sup>2</sup> )	<b>1 504,1</b>	<b>788,2</b>	<b>754,7</b>	<b>307,8</b>	<b>591,9</b>			
Corrections in the first financial decision							1,1	- 1,0	0,9
Corrections in the second financial decision							9,9	- 0,1	2,6
<b>Total amount of corrections in the financial decisions</b>							<b>11,0</b>	<b>- 1,1</b>	<b>3,5</b>
First conformity decision							82,5	7,1	0,0
Second conformity decision							12,7	17,4	2,6
Third conformity decision							68,8	33,1	0,0
Fourth conformity decision							81,2	83,9	64,1
<b>Total amount of corrections in the conformity decisions as of today</b>	( <sup>3</sup> )						<b>245,2</b>	<b>141,5</b>	<b>66,7</b>
<b>Total amount of corrections</b>		<b>1 504,1</b>	<b>788,2</b>	<b>754,7</b>	<b>307,8</b>	<b>591,9</b>	<b>256,2</b>	<b>140,4</b>	<b>70,2</b>
Corrections for late payments	( <sup>4</sup> )	10,6	5,6	20,4	21,1	14,8	25,2	25,5	6,9
Milk super levies		979,2	419,7	265,4	0	31,4	0	0	0
<b>Total amount of corrections net of late payments and milk super levies</b>		<b>514,3</b>	<b>362,9</b>	<b>468,9</b>	<b>286,7</b>	<b>545,7</b>	<b>231,0</b>	<b>114,9</b>	<b>63,3</b>
Percentage of corrections in the expenses cleared		1,6	1,2	1,4	0,9	1,5	0,6	0,3	0,2

(<sup>1</sup>) In the new clearance procedure, the expenses initially disjoined through the financial decision correspond to the expenses of paying agencies whose accounts cannot be cleared in the first instance after the conclusion of the certification report or due to the insufficient work of the certification body.

These expenses are cleared during a second financial decision after more work is done on the accounts of the paying agencies.

(<sup>2</sup>) In 1991, most of the corrections were related to milk super levies in Spain, 452,4 mio ECU, and Italy, 526,8 mio ECU (total of 979,2 mio Ecu).

(<sup>3</sup>) From 1996 on, the total amount of corrections is provisory, there are still conformity decisions to be taken.

(<sup>4</sup>) Automatic amount for late payments (in mio ECU / EUR):

— 1994: 661,3

— 1995: 391,7

— 1996: 271,7

— 1997: 129,1

— 1998: 70,4

NB: The amounts in italics are provisory.

*Exchange rates:*

1991: exchange rate used in the 24th financial report in Annex 23 'Financial results of 1991 clearance of accounts decision'.

1992 and 1993: exchange rates used for the Court of Auditors Special Reports No 1/97 and No 2/98 for corrections and disjunctions as well as the expenses declared.

From 1994 on: exchange rates used by the Commission in its summary reports.

## THE CONCILIATION PROCEDURE

### Background

55. The conciliation procedure begins after the Commission has sent its observations to the Member State. As a general rule, the letter states that corrections are being considered but the amount is not specified. Member States must reply in writing and then have an opportunity to discuss the proposed correction during bilateral meetings with the Commission. After such meetings the Commission communicates to the Member State the value of the correction it intends to apply. The Member State has 30 days in which to decide whether to take its case to the Conciliation Body. A period of four months is foreseen for conciliation, without prejudice to the Member State's right to appeal to the European Court of Justice. Member States may go straight to the European Court of Justice rather than take their case to the Conciliation Body.

56. The Conciliation Body was established in 1994 <sup>(1)</sup> (operational from September 1994) as part of the Belle reform and is an integral part of the clearance procedure. The opinions of the Body are not binding on the Commission's final decision on the clearance of accounts. The Conciliation Body is composed of five Members who are nominated by the Commission after consulting the EAGGF Committee.

57. The procedure was applied for the first time with regard to the 1992 clearance of accounts, and as such it pre-dated the introduction of the separate financial clearance decision in 1996. In fact, most of the 120 opinions given by the end of 1999 relate to the period 1992 to 1995.

58. The Court has previously commented on the work of the Conciliation Body in its special reports relating to the clearance of accounts for 1992 and 1993 <sup>(2)</sup> but has not previously undertaken a comprehensive review. An evaluation was carried out by the DG 'Agriculture' clearance unit in conjunction with the Conciliation Body's secretariat's in 1999. This evaluation should have been carried out by a more independent service, such as DG 'Financial Control'.

59. The evaluation report describes the work and problems faced by the Conciliation Body. The main problems that the Conciliation Body has to contend with are getting the different Commission services to agree, within the four-month deadline <sup>(3)</sup>, and dealing with 'new' information that is submitted by the Member States at the time of conciliation and not before. The Court agrees with many of the points made in the report but draws different conclusions from the data it contains. The reasons for these dif-

ferences are set out in the following paragraphs and are based on an examination of a sample of 50 of the opinions given by the Conciliation Body.

### Role of the Conciliation Body

60. The Belle group recommended a mandatory mechanism in the form of an independent consultative body to enable the Commission and the Member States to settle out of court by negotiation. What was actually established under Commission Decision 94/442/EC <sup>(4)</sup> was a Conciliation Body whose remit is 'to try to reconcile the divergent positions of the Commission and the Member State concerned' with regard to corrections proposed by the Commission in the context of the clearance of accounts procedure.

61. In December 1995, the President of the Conciliation Body produced a report on the first year of its operation. It had already become clear that the Body had failed to bring about definitive settlements. This report provided input for the Commission's reflections paper <sup>(5)</sup>, which recognised that conciliation was essentially unrealistic but rejected any thought of the idea of arbitration, which would imply that the opinions of the Conciliation Body would be binding. Instead it proposed that the Conciliation Body concentrate on the arguments put forward by both sides, evaluate their validity and recommend what it considers to be an appropriate correction. The reflections paper included a proposal to modify the Decision setting up the Conciliation Body in order to give greater emphasis to Article 1(c), which requires the Conciliation Body to draw up a report and explain any points of dispute unresolved. The proposal was not adopted. Whilst the Conciliation Body has commented on what it considers to be excessive corrections, it has never openly stated that the corrections should have been higher, although it is not precluded from doing so under Article 1(c).

### Performance measurement of the Conciliation Body

62. A number of criteria have been mentioned in the evaluation report in an attempt to measure the added value and effectiveness of the Conciliation Body: meeting the four-month deadline, outcome, impact on the number of cases submitted to the European Court of Justice and financial impact. The Court has carried out its own analysis of these issues.

### The four-month deadline

63. As a general rule, the Conciliation Body should issue its report within the four-month deadline. However, 25 of the 120 cases have been granted an extension of one or two months (in one case, four months) when the Commission has agreed to such

<sup>(1)</sup> Commission Decision 94/442/EC of 1 July 1994 (OJ L 182, 16.7.1994, p. 45).

<sup>(2)</sup> Special Report No 1/97 (OJ C 52, 12.2.1997) and Special Report No 2/98 (OJ C 121, 20.4.1998).

<sup>(3)</sup> A point previously made by the President of the Conciliation Body in his report (December 1995) on the first year of operation of the procedure.

<sup>(4)</sup> See footnote 1.

<sup>(5)</sup> FR/06/95/50800000. P00.

a request from the Member States in order to allow them more time to submit their evidence. Even at the end of this extended period only 20 % of the 25 cases concerned result in an effective conclusion.

64. It takes on average a further five months for the Commission to take a conformity decision formalising the corrections that have been considered by the Conciliation Body. Due to peaks in the workload of the Conciliation Body, cases may be delayed and cannot be included as foreseen in the submission for a conformity decision. For example, 18 conciliation cases (277 million euro) had to be excluded from the fourth conformity decision <sup>(1)</sup> because they were still being dealt with by the Conciliation Body. The accounts themselves are adjusted, on average, two months after the date of the conformity decision. The typical correction therefore takes a year from the time it is submitted for conciliation until it is charged to the Member State. The Court has found no evidence to support the claim made in the evaluation report that conciliation has enabled the Commission to reach decisions within a reduced timescale.

### Outcome

65. The total value of all 279 corrections proposed for the period under review shown in the evaluation report is 2 436,2 million euro of which 125 corrections corresponding to 1 636,2 million euro (two thirds) were submitted for conciliation. During the conciliation process this total was reduced by 275 million euro (17 %).

66. The evaluation report claims that 17 % of the 120 cases have been successfully reconciled in so far as the Member State accepted the proposed corrections or the Commission reduced or withdrew them. Four corrections were nevertheless subsequently taken to the European Court of Justice <sup>(2)</sup> and several were dropped because the Commission reduced the proposed correction before a conciliation hearing took place. If these cases were discounted the true 'success' rate would fall to 10 % by number.

67. In 26 % of cases the Body agrees with the correction proposed by the Commission, and for 50 % of the cases, agrees that a correction is warranted at a lower level than the one proposed, but the Commission maintains its position. Many of these cases are also taken to the European Court of Justice.

68. In 10 % of cases the Body cannot reach a conclusion because it is not competent in legal matters or there is insufficient information to enable it to do so. Again, most of these corrections become the subject of Court cases.

### Why corrections are contested

69. Four Member States (Greece, Spain, France and Italy) account for 70 % of all cases submitted to the Conciliation Body (80 % by value). This is also in line with their share of the total corrections imposed (*Graph 1*). The benefits in terms of reduced corrections are proportional, some 200 million euro (75 %) of the total reduction.

70. Most of the corrections submitted for conciliation were based on flat rates — for the period 1992 to 1995, 60 % by number and 70 % by value. There are a number of reasons why Member States go to conciliation over flat rates <sup>(3)</sup> :

- (a) increases in the corrections initially proposed by the Commission;
- (b) regional weaknesses: 'centralised' Member States (as opposed to those with a regional network of controls and paying agencies) are particularly vulnerable as regards the application of flat rate corrections because findings related to a particular region are extrapolated nationally;
- (c) post-audit improvements: before the introduction of the reformed clearance of accounts system the Commission gave Member States a chance to prove that the situation upon which the proposed correction had been based had since improved and that in recognition of this the Commission would reduce the penalty even though the weaknesses were clearly applicable throughout the period to which the correction related. Following criticism by the European Court of Auditors and the European Parliament, this approach was abandoned. More recent cases demonstrate that unless improvements have had the desired effect, corrections for weaknesses may be repeated from one year to the next.

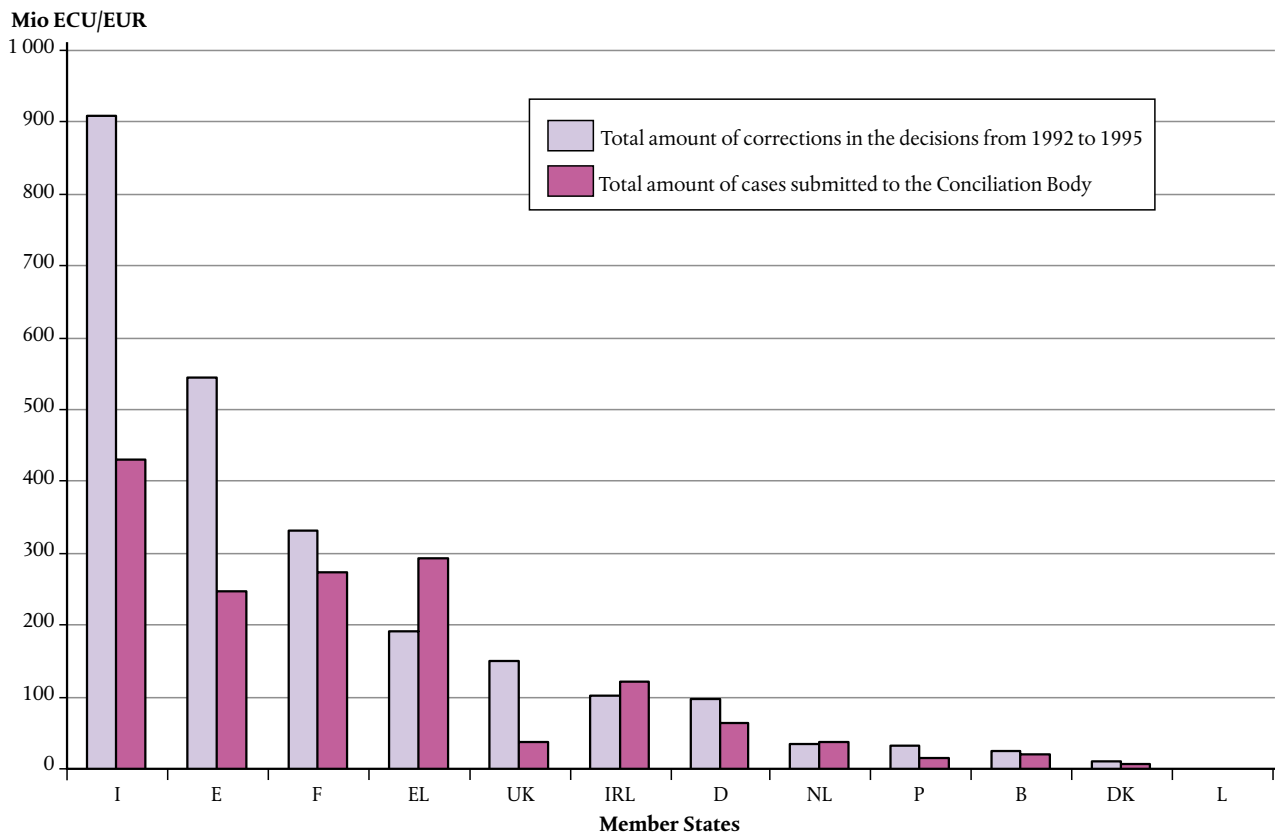
<sup>(1)</sup> Commission Decision 2000/216/EC of 1 March 2000 (OJ L 67, 15.3.2000, p. 37).

<sup>(2)</sup> Greece 28, 48, 65 and Italy 94.

<sup>(3)</sup> The flat rates are 2 %, 5 %, 10 % and 25 %.

Graph 1

Total amount of corrections in the decisions and value of the cases submitted to the Conciliation Body, per Member State (1992-1995)



### The European Court of Justice

71. One of the expected benefits of the introduction of the conciliation procedure was a reduction in the number of cases referred to the European Court of Justice, but this has remained the same (on average five or six cases per year). During the period under review (EAGGF years 1992 to 1995) 25 cases were submitted covering 54 corrections (979 million euro, equivalent to 60 % of the total submitted for conciliation). As at November 1999, judgments had been given in respect of 10 cases covering 21 corrections (283 million euro) — all in favour of the Commission <sup>(1)</sup>.

72. Case 347/85 <sup>(2)</sup> established that where the Commission has made a calculation of the financial impact of the infringement, 'the burden of proving that those calculations are not correct rests on the Member State'. More generally, this judgment also cited Case 49/83: 'When the Commission refuses to charge certain expenditure to the EAGGF on the ground that it was incurred as a result of breaches in Community rules imputable to a Member

State, it is for that State to show that the conditions for obtaining the financing refused by the Commission are fulfilled'.

73. The European Court of Justice can only decide whether to uphold or annul. It cannot recommend a change to the actual amount of the correction although in one case (C-253/97 concerning 96/IT/044 (olive oil)), it has stated that a higher correction could have been justified.

### CLEARANCE DECISIONS

#### Corrections as a performance indicator

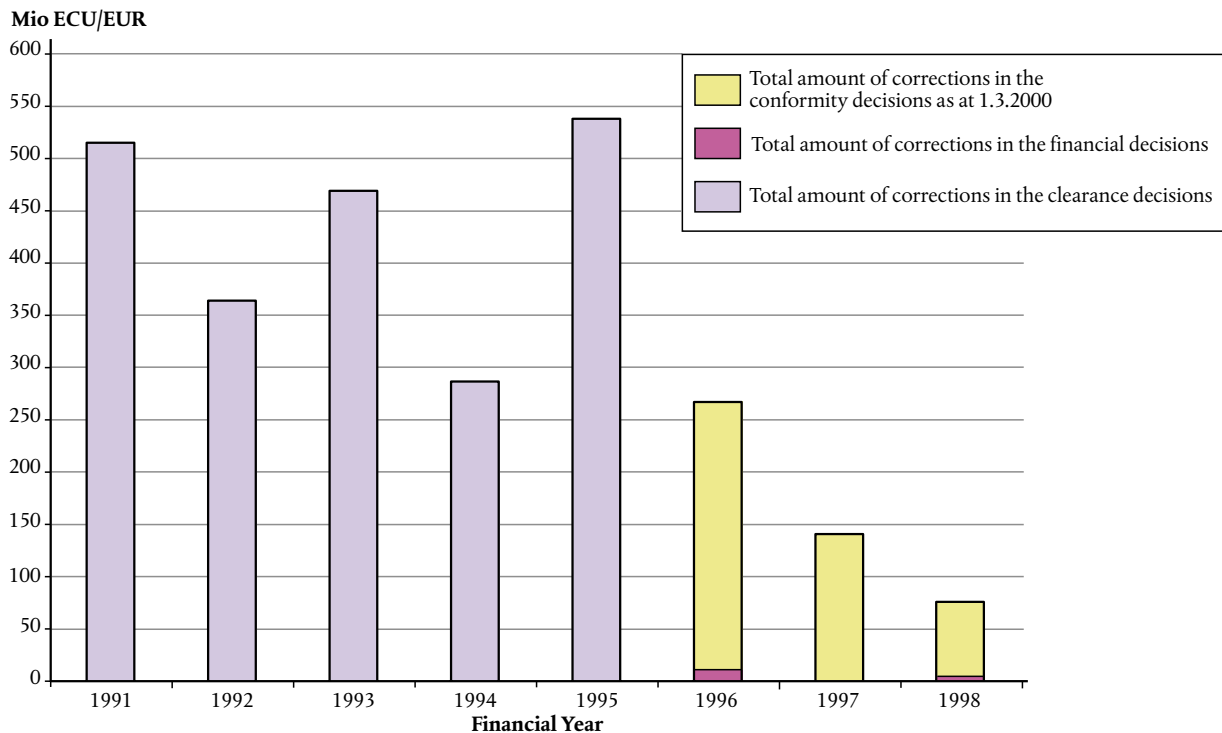
74. Under the reformed system the corrections have until now been considerably lower than they were under the old system (Graph 2). The European Parliament and the Committee of Independent Experts have expressed concern at the falling level of corrections. They read this as a sign that the Commission's clearance of accounts unit may not be as effective as it was as a result of a decrease in coverage and/or quality of controls. There is little evidence to support such a theory. Indeed, all the signs point the other way — the clearance unit has been considerably reinforced over the years and the reports produced are, for the most part, comprehensive and incisive.

<sup>(1)</sup> A further two cases (C-245/97 and C-129/99) were submitted directly to the European Court of Justice, the former has not yet been judged and the latter has been withdrawn.

<sup>(2)</sup> *United Kingdom of Great Britain and Northern Ireland v Commission* [1988] ECR 1749. Clearance of EAGGF accounts.

Graph 2

## Clearance of accounts corrections (1991-1998)



75. The published *financial* clearance decisions are not easily understood. Although the presentation is consistent it is also complicated. The key information that does not appear in the published decisions is the value of corrections, which can only be found in the unpublished summary document whereas the *conformity* decisions clearly show the value of corrections. The total value of corrections excluding late payments and other 'automatic' corrections, (since they are not measures of the effectiveness of the clearance unit) should be the starting point for any comparisons. *Table 6* presents these amounts for the years 1991 to 1998. Only years 1991 to 1995 are closed, the last corrections affecting the 1996 financial year may not be decided until the end of 2000. A number of other factors also explain the apparent fall in the yearly value of corrections.

76. The very limited data available suggests that corrections made in the context of the financial decisions represent a very small part of the total corrections for a given year (see *Graph 2*). The Commission has stated in a document produced in response to questions put to it by the Committee of Independent Experts that the financial clearance corrections concern 'modest book-keeping adjustments and other errors' and that 'the reformed procedure necessarily leads to long delays in making final conformity corrections in respect of a given year'. The expenditure is cleared in the financial decisions without prejudice to subsequent conformity decisions which usually cover two or three years and are taken at irregular intervals as and when the conciliation procedure has run its course.

77. The annual certification of the paying agencies' accounts has improved the general level of financial accountability. The need to meet accreditation criteria, in particular regarding internal control, has increased/instituted a greater sense of responsibility for the protection of the Community's financial interests.

78. There can be no doubt that the implementation of the integrated administration and control system (IACS) has had a major impact on the prevention of irregular payments. The *ex ante* physical inspections on farm (5 % of area-based claims and 10 % of headage premium claims) lead to a large number of claims being penalised or rejected by the Member State before payment. The use of techniques such as satellite remote-sensing, aerial photography, risk analysis and random sampling have a strong deterrent effect. The ability to cross-check claims further increases the likelihood of detection of false claims.

79. The Commission has undertaken only to make corrections if the Member States themselves fail to take timely corrective action for errors detected by the Certifying Bodies. Moreover, conformity corrections have a maximum incidence of two years preceding notification.

80. Significant corrections may be made over the next two years (2000 and 2001) as a result of the work on long outstanding

debts by OLAF (see paragraph 16). Other corrections resulting from the clearance unit's conformity audits are also likely to increase the total value of corrections in the short term. In the medium term the value of corrections should decrease as the effectiveness and scope of IACS increases.

### **Disjunctions**

81. There are two reasons for disjoining expenditure from the financial clearance decision that must be taken by 30 April: the Certifying Body has issued a qualified certificate with serious weaknesses and/or the work of the Certifying Body is not satisfactory/sufficient (the Commission needs more information on some points and asks for complementary work to be carried out). Once satisfied, a second financial clearance decision must be taken. For each of the years 1996 to 1998 there have been significant disjunctions (28 500 million euro in total). The huge amounts involved are due to the fact that all the expenditure declared by the paying agency is disjoined, even though only part of it is called into question. The time taken to clear the expenditure disjoined under the April financial decision has increased from three to 10 months (see *Table 1*).

### **Late payments to beneficiaries**

82. Commission Regulation (EC) No 296/96 <sup>(1)</sup> explains how payments to Member States must be reduced when they have failed to make the payments by the deadlines set by the Commission (a 4 % tolerance is allowed under the Regulation). Adjustments for late payments are shown in *Table 6*. For the period 1994 to 1998, they represent just 8 % of the total value initially determined by the system. Member States have put forward many reasons why they should not be penalised for making late payments and these have been accepted by the Commission.

83. For example, in 1996, of the 271,7 million euro initially calculated, only 25,2 million euro was retained by the Commission in its third conformity decision. Reductions were decided on an 'ad-hoc' basis, given the information sent by the Member States which was accepted by the Commission after many discussions and review of the supporting documents. The reductions relate to bookkeeping errors (53 million euro for Greece); an extension granted to Italy to carry out supplementary controls asked for by the Commission (154 million euro); and an increase in delays in

respect of problems encountered when changing the payments system for the United Kingdom.

84. It is the Commission's task to assess the justifications for late payments put forward by the Member States. However, this aspect of the work is considered to be low risk by the Commission and consequently is not given priority. Despite the fact that since 1996 the sums initially determined by the system are far greater than the total value of the corrections made, this aspect has received little attention.

### **Discharge**

85. One of the major criticisms of the old system was the time it took to clear the accounts and consequently to grant discharge. *Table 1* shows that the introduction of the reformed system has not yet had an impact on the time taken to clear the accounts.

86. It is too early to say what impact, if any, the reformed clearance procedure will have on the discharge. The discharge for the EAGGF 1993 to 1995 was granted by the Parliament in July 2000. 1996 has yet to be considered by the discharge authority despite the fact that the financial clearance was completed in July 1997.

## **CONCLUSIONS**

87. There are still too many paying agencies and the number is likely to increase. The Commission should encourage Member States to rationalise their paying agency structure. Some paying agencies are poorly defined and too many fail to meet all of the accreditation criteria (see paragraphs 9 to 12). The latter is of particular concern where these are amongst the largest in expenditure terms (see paragraphs 13 to 25). Delegation of tasks and obtaining the necessary assurance that customs controls have been satisfactorily performed continue to cause major problems (see paragraphs 20 to 22).

88. The Court considers that the conciliation procedure has been insufficiently effective and that the Conciliation Body should take a clear position on all cases presented to it and come up with concrete suggestions with regard to the level of correction that should be applied.

89. The total amount of corrections for a given year has so far been lower under the reformed system than it was under the old (see paragraph 74). This is partly due to the fact that not all of the conformity decisions affecting 1996 have yet been taken. Other factors that may also have an impact are: better pre-payment

<sup>(1)</sup> Commission Regulation (EC) No 296/96 of 16 February 1996, on data to be forwarded by the Member States and the monthly booking of expenditure financed under the Guarantee Section of EAGGF and repealing Regulation (EEC) No 2776/88 (OJ L 39, 17.2.1996, p. 5).

controls (IACS) (see paragraph 78); the 24-month rule; the fact that errors found by the Certifying Bodies are not used as the basis for corrections if the Member States take appropriate action; the effect of the Conciliation Body. It is therefore inappropriate to draw a negative conclusion from the lower level of corrections.

90. There is no evidence that the reformed clearance procedure has accelerated the timescale for clearing overall expenditure for a given year in terms of financial correctness and conformity decisions. More than three years have passed since the first year of the reformed system (1996) and the final conformity decision has yet to be taken. The accreditation and certification (see paragraph 77) requirements have greatly improved Member State accountability

for EAGGF funds although there is scope for improvement on both fronts.

91. There has been an improvement in the overall quality of the reports produced by the Certifying Bodies for the years 1996 to 1998. This is partly attributable to greater and more precise guidance from the Commission and also to experience gained by the Certifying Bodies during the course of their work. However, there is scope for further improvement and harmonisation, in particular with regard to the application of sampling techniques and error identification, classification and evaluation (see paragraphs 33 to 46). Despite these weaknesses, the reform of the clearance of accounts procedure has been a success.

This report was adopted by the Court of Auditors in Luxembourg at its meeting of 29 and 30 November 2000.

*For the Court of Auditors*

Jan O. KARLSSON

*President*

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## THE COMMISSION'S REPLIES

### SUMMARY

#### Context

The reform of the clearance of accounts process has been a major undertaking for the Commission and for the Member States. In many cases it required considerable changes by the Member States.

The Commission agrees with the Court that there have been major improvements in accountability, transparency and performance. But further improvements still have to be made. It is, however, extremely difficult to take a photograph of the position at any time as improvements and developments are continually ongoing.

The Commission services will continue to review the respect of the accreditation criteria, through its own efforts and via the annual examination of the Certifying Bodies' reports. These continue to improve in quality. A new reporting standard for 1999 has standardised and improved reporting, particularly on sampling and error evaluation.

The examination of the Court was in many ways complementary to the ongoing work of the Commission. The Court concentrated on the detailed operation of Certifying Bodies, while the Commission has spent more time on examining the operation of the paying agencies. The Court's observations have been taken into account in the examination of the 1999 reports. The Commission would like to thank the Court for its assistance in this respect.

#### Accreditation

The legislative authority decided that the number of paying agencies should be decided by the Member States. While the Commission would welcome a reduction in the number of paying agencies its influence is limited. The Commission has, however, encouraged the Member States to reduce this number and some have done so.

#### The Certifying Bodies

The Court states that four Certifying Bodies failed to comply with the independence requirement. The Commission does not think that the use by the Certifying Bodies of the internal audits conducted by the paying agencies is inappropriate; however, the cer-

tification can be improved in order to comply more closely with international audit standards and to provide appropriate documentary back-up. The Court notes (paragraph 29) that the Commission has now resolved the problem.

The Commission believes that it is far too simplistic to take the amount of expenditure declared by paying agencies with qualified accounts and use this as a performance measure. It is important to examine each qualification individually before making judgements on this point.

#### The conciliation procedure

In the clearance of accounts procedure the Commission has very substantial powers. Firstly it is responsible for auditing and evaluating the Member States' management of EAGGF Guarantee expenditure, and, secondly, it is the institution which unilaterally decides on the amounts to refuse for financing.

In a system of this kind, as in any auditing system, it is important that the auditee has the right to have his views heard and also to question the strength of the arguments of the auditors.

This is in part guaranteed through an exchange of views and information in the bilateral procedure between the Member State and the Commission. The examination of the strength of the arguments advanced by the Commission is further ensured by the existence of the Conciliation Body, which also functions as a kind of external quality control on the work performed by the Commission auditors. The conciliation procedure is thus, in the view of the Commission, an important and necessary part of the clearance of accounts.

The assessment that the Conciliation Body has largely failed to reconcile the opposing views can be considered too negative. In view of the large financial amounts in question, it is understandable that an agreement between the Commission and the Member State is rarely reached. The Commission is legally obliged to exclude expenditure from Community financing where that expenditure has not been effected in compliance with Community rules and therefore cannot accept compromises on the calculation of corrections that would not be compatible with this obligation. On the other hand, the national authorities will not accept any limits on their right to approach the Court of Justice, which does open an additional possibility to cancel or to reduce the correction.

It should be underlined that the conclusions of the Conciliation Body are always supported by detailed reports, and often conclude that the Commission should take into consideration certain arguments or elements of fact which have an impact on the level of the correction. However, the Conciliation Body is not always in a position to calculate precisely the amount of the modified correction.

In cases where the Commission services do not agree with the Conciliation Body's conclusion, this is justified in the Summary Report and the Member States have the possibility to discuss it in the EAGGF Committee.

### Clearance decisions

The amount of time available to examine the accounts and certificates is limited. If there are uncertainties or outstanding questions then the Commission considers that it is prudent to disjoin accounts.

### Conclusion

Concerning the overall timescale for the conformity procedure, the Commission accepts that the last corrections for the 1996 year will not be made any quicker than under the old procedure. However, the new procedure has resulted in considerable amounts of corrections being imposed at a much earlier stage than in the past (see paragraphs 54 and 55).

1996 was the first year of the reformed procedures for the clearance of accounts; the Commission expects the final corrections for later years to be introduced considerably earlier than would have been the case under the old system. The full effects of the reform have not yet been seen. In this context, the Commission considers that the conciliation procedure has contributed to this general improvement.

The Commission welcomes the Court of Auditor's conclusion that the reform of the clearance of accounts process has resulted in improved accountability and is a considerable achievement (see also reply to paragraph 91).

## ACCREDITATION

### *Number and nature of paying agencies*

10. Concerning Italy, the Commission has not yet been formally notified of any new paying agencies (although this remains a possibility).

12. The responsibility for the payment of certain accompanying and fisheries measures was transferred to the Department of Marine and Natural Resources on 1 January 1998. A review of the respect of the accreditation criteria was carried out, and a comprehensive report produced on 13 March 1998. This proposed provisional accreditation and set out a list of necessary improvements.

Provisional accreditation was granted on 15 June 1998. The clearance of accounts unit visited the new paying agency in June 1998 to confirm that accreditation was appropriate. The 33 million

euro declared by this paying agency in 1998 was subject to a full and comprehensive certification.

The Commission was therefore satisfied that this expenditure had been properly incurred.

Full accreditation was given in December 1998 after all the necessary conditions had been met.

### *Failure to meet the accreditation criteria*

### Debtors

14 to 16. The Commission shares the concern of the Court about the management and recovery of EAGGF debt. This issue has received increased attention from the clearance unit since the establishment of the accreditation criteria, culminating in the enquiry undertaken in 1999.

### Internal control

18. Following recommendations from the Commission and the Certifying Body there have been several improvements in the internal audit and inspection arrangements for the French paying agencies and for the 'départements'.

### Delegation

19. In certain Member States small amounts of expenditure, relating to the accompanying measures, have been paid by organisations outside the paying agencies. This has been authorised by the Commission only where adequate safeguards have existed. It is in line with declarations made to the Council while establishing the Regulation. The amount of money involved is extremely low.

'Strukturdirektoratet' has now become an integral part of the Danish paying agency so this problem no longer exists.

The delegation of final payments to the beneficiary to cooperatives in Greece has never been considered acceptable by the Commission. However, as it is currently the only way to ensure that farmers receive their subsidy payments the Commission has been forced to tolerate this system.

The Greek paying agency is developing the information technology systems to allow direct payment to the beneficiary but this is going rather slowly. After the identification of other problems in the Greek payment system the Commission will insist that this process be speeded up.

22. The Commission is aware of the problems identified by the Court and has, as indicated by the Court, insisted that the information flow between the customs' authorities and the paying agencies be formalised through the establishment of Protocols between the two parties.

The Commission regularly reviews the conformity of export refunds with the Community legislation.

## THE CERTIFYING BODIES

### *Requirements*

25. It is correct that the examination of sampling and error evaluation by the Certifying Bodies has not been a systematic part of the work of the clearance of accounts unit. This unit has tended to concentrate more on the performance of the paying agencies. The Commission therefore welcomed the decision of the Court to examine this aspect in detail. The findings of the Court have been taken into account and improvements made for the 1999 exercise.

26. Under the terms of the Financial Regulation, Financial Control has the right to examine any aspect of the certification that it so chooses. This includes visits to the national paying agencies and Certifying Bodies, if need be following consultation with the Directorate-General for Agriculture. As the Court points out, the Commission proposes, as part of the recasting of the regulation, to step up audit work, including in connection with the clearance of the EAGGF Guarantee accounts.

### *Independence*

30. The Commission shares the Court's reservations about the use of internal audit services in the certification. During the experts' group of July 2000 the Commission services insisted that, if Certifying Bodies wish to rely on the work of internal audit, the relevant international audit standards must be complied with. This point will be carefully verified by the Commission services. It is clear that, should internal audit services be involved in certification, they must also be able to perform their own tasks.

### *Auditing standards*

32. Regarding Ireland, the Commission would point out that notwithstanding the weaknesses identified it has been very satisfied with the overall quality of the work produced by the Certifying Body.

### *Sampling*

#### *Sample size*

40 to 47. The Commission has made great efforts to improve reporting on the technical parameters for sampling, including the

development of a new standard report. Specific attention was paid to this subject during the 1999 clearance and weaknesses that have been identified should now have been corrected.

41. The discretion given to Certifying Bodies in the performance of their work is a deliberate policy of the Commission.

Given the wide diversity of paying agencies the Commission believes that the Certifying Bodies are in the best position to decide how to carry out their work, based on international audit standards.

### **Error Evaluation**

44. The Commission has made great efforts to improve reporting on error evaluations, including the development of a new standard report. Specific attention was paid to this subject during the 1999 clearance and weaknesses that have been identified should now have been corrected.

44(b) The Commission considers that deductions from subsidies in Greece for IACS schemes are irregular and has made financial corrections equivalent to any deductions made. The Greek authorities dispute this judgement and the case is currently before the Court of Justice of the European Communities.

For non-IACS measures, new legislation, applicable from 1 January 2000, clearly stated that all aids should be paid in full to the beneficiary. Before this date there was no formal requirement in the Community legislation to pay the beneficiary in full without deductions. The Commission does not therefore believe that these deductions could be treated as errors. The Greek Certifying Body has clearly noted all deductions from payments in the audit report.

47. With just one exception, every Certifying Body has reported a total error rate of under 1 %. The Commission agrees to examine the Court's proposal to compile a database of error rates.

International audit standards do not require auditors to follow up errors detected in previous years. The Commission services have, however, encouraged Certifying Bodies to go beyond international audit standards in this respect.

### *Local offices and on-the-spot controls*

48 to 50. The Commission services have encouraged Certifying Bodies to carry out work on the spot, for example by accompanying controllers. Many Certifying Bodies have taken this approach.

### **Qualification of accounts**

51 and 52. Every qualification is examined carefully by the Commission. Where necessary further enquiries are undertaken, including visits to the paying agency and/or Certifying Body. The Commission then makes a judgement on the action to take in each case, which may include financial correction, disjunction, passing to the conformity teams of the clearance unit for follow-up or noting for later follow-up.

In many cases the Certifying Body casts doubt on a certain part of the expenditure of the paying agency but cannot quantify any error that may have occurred. Often this is best treated in the conformity process, and financial corrections may be proposed. In other cases the Commission services consider that they need more information before accepting the accounts; accounts are then disjoined.

Failure to meet one or more of the accreditation criteria does not necessarily have any impact on the correctness of the accounts. Accounts are not disjoined on this basis, but the weaknesses identified will be followed up in conformity or accreditation missions.

Some qualified accounts are accepted by the Commission because, after examination, it considers that the qualification, although relevant to the operation of the paying agency as a whole, is not relevant to the expenditure of a particular year.

### **CONFORMITY DECISIONS**

54. The Court reports on the first three conformity decisions. Since then two further decisions have been taken. In March 2000 a total of EUR 229 million, covering the period 1996 to 1998, was corrected <sup>(1)</sup>. In July 2000 a total of EUR 351 million, covering the period 1996 to 1999, was corrected <sup>(2)</sup>.

The Commission accepts that the last corrections for 1996 will not be made any quicker under the new system than under the old. However, under the old system, all corrections for 1996 would have been made in 2000, corrections for 1997 in 2001, and so on. The reform has therefore considerably speeded up the correction process. Several hundred million euro has been recovered for the Community more quickly than would have been the case under the old system.

<sup>(1)</sup> Decision 2000/216/EC (OJ L 67, 15.3.2000, p. 37).

<sup>(2)</sup> Decision 2000/449/EC (OJ L 180, 19.7.2000, p. 49).

Finally, the Commission considers that 1996 is the first year of the reformed process and is confident that corrections for future years will be completed more quickly.

## **THE CONCILIATION PROCEDURE**

### **Background**

58. The evaluation report on the conciliation procedure was drawn up by the Directorate-General for Agriculture.

### **Role of the Conciliation Body**

60. The Commission is legally obliged to exclude expenditure from Community financing where that expenditure has not been effected in compliance with Community rules, and therefore, cannot accept compromises on the calculation of corrections that would not be compatible with this obligation. The proposal to settle cases on a 'transaction' basis was therefore not acceptable.

61. The Commission attaches importance to the role that the Conciliation Body plays in ensuring quality control. Nevertheless the Commission can accept the Conciliation Body's conclusion only where it appears that, on the basis of the facts and arguments exchanged, this conclusion is more appropriate than the initial proposal of its services.

To stress this aspect of the role of the Conciliation Body, the Commission has, by Decision 2000/649/EC (OJ L 272, 25.10.2000, p. 41), amended Decision 94/442/EC in order to facilitate the appointment of members specialised in modern audit techniques, in addition to members highly qualified in matters relating to the EAGGF, as it is currently the case.

As regards the possibility for the Conciliation Body to propose increases of corrections this is basically incompatible with the idea of conciliation.

### **Performance measurement of the Conciliation Body**

#### **The four-month deadline**

64. The Court considers that the conciliation process has not speeded up the clearance process. The Commission notes that the problems raised essentially concern the old clearance of accounts method which involved taking a decision for each financial year. In the new system the possibility exists of adopting a number of clearance decisions in one calendar year.

The speeding up of the clearance procedure is the result of the reform in general, from which the conciliation procedure cannot be separated.

### Outcome

66 to 68. The percentages in the evaluation report of the Conciliation Body must be kept as they serve only to give an indication of its success in bringing the positions of the Commission and the Member States closer together. They do not themselves prejudice the final outcome of the disputed cases, in particular because the right to bring an action before the Court of Justice belongs to the Member State concerned and this right is not affected by the conciliation procedure.

### *The Court of Justice of the European Communities*

71. The Commission naturally hoped that the introduction of conciliation would reduce the number of cases referred to the Court of Justice, but this was never a formal objective of the system as it is outside the control of the Commission. The Conciliation Body was in fact set up to strengthen the Member States' rights of defence and to make for greater transparency in matters which might ultimately result in financial corrections.

The Commission would point out that the Treaty gives Member States the right to bring actions before the Court of Justice. The Commission is not in a position to affect the actions of the Member States in this regard.

### CLEARANCE DECISIONS

#### *Corrections as a performance indicator*

74. The Commission notes that the objective of the clearance of accounts process is not to propose financial corrections. The main objective is to verify whether payments have been made in conformity with the rules. The Commission believes that conformity with the rules has improved, through the development of better and clearer rules and through improvements in control systems (such as IACS).

The Commission works with the Member States to constantly improve the implementation of the CAP legislation. The aim is, over time, to reduce the level of corrections, ideally to arrive at a situation where no corrections are required.

75. The Commission accepts the comment of the Court that the published financial clearance decision is not easily understood. It will examine the possibility of publishing a clearer decision.

### *Disjunctions*

81. No accounts were disjoined in 1999. However, the Commission will continue to disjoin the accounts if there are material uncertainties existing by the end of the certification process. Given the limited time available to clear the accounts it is naturally prudent to disjoin accounts if more information is needed. The time taken to make the second decision depends on several factors. It will increase or decrease depending on the difficulties identified. It is too early for a pattern to be identified.

### *Late payments to beneficiaries*

82 to 84. The Commission may apply the discretionary powers allowed for in Regulation (EC) No 296/96. This discretion was particularly used in the first years of the application of direct aids.

The clearance unit is obliged to carry out its work based on risk analysis, and has been encouraged to do so by the Court of Auditors and the Parliament. It is thus inevitable that some areas will not be examined in any given period. Various studies have been made of this question.

The Commission stresses that these payments were not incorrect or irregular payments to the final beneficiary. They relate to payments made by the Member States to the final beneficiary after the regulatory deadline.

This system for promoting the payment of aids within deadlines was introduced in 1996. It affected all Member States and all schemes. In the first years of the scheme many Member States found it difficult to complete the administrative work necessary within the deadline.

The Commission did not want, in the first years, to punish Member States that were acting to protect the financial interests of the Community. Imposing too high penalties may have encouraged Member States to pay aids within the deadlines, whether or not all checks had been completed, and the Commission wanted to avoid this risk. It has therefore applied the discretionary powers allowed for in Regulation (EC) No 296/1996. Cases where this discretionary power has been used are set down in working documents distributed to the Member States to demonstrate that all cases are treated equally.

The level of corrections for late payments is falling, even though, as part of its commitment to budgetary discipline, deadlines are being set for more and more measures.

**CONCLUSIONS**

87. The Commission notes the Court's comment that there still too many paying agencies. However, it is for the Member States to decide how many paying agencies are established. The Commission has encouraged Member States to rationalise their structures and several have already done so.

88. Bringing an action before the Court of Justice is a right which Member States enjoy under the Treaty. The Commission is not in a position to affect the actions of the Member States in this regard. For a Member State, a Court case can only lead to the maintenance or reduction of the financial correction imposed by the Commission.

The Commission believes that the conciliation procedure is an integral part of the reform of the clearance of accounts and cannot easily be separated from all the other aspects introduced in the reform. It believes that the conciliation procedure has contributed to the overall improvement in the clearance of accounts that the Court has identified.

89. The Court concludes that it is inappropriate to draw a negative conclusion from the lower level of corrections. The Commission notes and shares the conclusions of the Court in this regard.

90. The Commission accepts that the last corrections for the 1996 year will not be made any more quickly than under the old procedure. However, the new procedure has resulted in considerable amounts of corrections being imposed at a much earlier stage than in the past (see paragraphs 54 and 55).

1996 was the first year of the new procedure; the Commission expects the final corrections for later years to be introduced considerably earlier than would have been the case under the old system.

A new reporting format introduced for the 1999 clearance considerably improved the reporting of information on sampling and error evaluation. The clearance of accounts unit will continue to work to make improvements in both accreditation and certification of paying agencies.

91. The Commission notes and welcomes the Court of Auditors' assessment that the reform of the clearance of accounts procedure has been a success.

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